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THE  
**Parish Officer,**  
COMPRISING  
THE WHOLE OF THE PRESENT LAW  
RELATING TO THE SEVERAL  
**PARISH AND UNION OFFICERS,**  
AS WELL AS OF  
THE GUARDIANS OF THE POOR IN ENGLAND;  
COMPRISING ALSO THE  
LAW AS TO CHURCH RATES, HIGHWAY RATES,  
**VESTRIES,**  
WATCHING AND LIGHTING, &c.

**Third Edition.**

BY JOHN FREDERICK ARCHBOLD, Esq.

BARRISTER-AT-LAW.

LONDON:  
SHAW AND SONS, FETTER LANE,  
Law Printers and Publishers.

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1858.

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# ADVERTISEMENT

TO THE  
THIRD EDITION.

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I HAVE taken great pains in editing this Edition. I have also added to it very considerably, particularly under the head of "*Clergymen of the Parish.*" It was intimated to me, from some clergymen, that it was desirable I should, under this head, state shortly the law relating to Advowsons and Tithes,—subjects in which they are, of course, much interested. I have done so: I have stated the whole law respecting Advowsons, including presentation, institution, induction, &c., and the mode of aliening an advowson when vested in trustees under the recent statute 19 & 20 Vict. c. 50; I have treated of Tithes, to whom payable, exemptions, what estates may be had in them, how aliened, how commuted, how set out, how sued for and recovered, &c. I have been obliged, from the nature of the work itself, to give merely a summary of the law upon both these subjects; to treat of them at large, would of course occupy infinitely more space than I could assign to them.

Under other heads, I have described the duties of the different officers of a parish, as enumerated

and particularly adverted to in the Preface to the first edition. And throughout the whole of the present edition, I think that the reader will find that I have taken infinite pains to render it complete and correct.

J. F. A.

*9, King's Bench Walk, Temple,  
November, 1857.*

# P R E F A C E

TO THE

FIRST EDITION.

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I HAVE written largely upon most subjects of Parish Law, and have incidently treated of the appointment and the duties of the several Parish Officers. But it has been suggested to me, by my Publishers, that it would be very desirable, and a great convenience to Parish Officers, if I were to write a work, defining exactly their respective duties, giving plain directions for the performance of them, stating the modes of appointment to their several offices, and other incidental matters, and giving the several Acts of Parliament now in force upon each particular subject. I have done so ; and the reader will find in this little work the several subjects which have been suggested to me, treated of in the manner I have now mentioned, and arranged alphabetically for the convenience of reference :—namely,—Church Rate,—Church-wardens,—Clergymen of the Parish,—Collector of Highway Rates,—Collector of Poor Rate,—Constable,—Guardians of the Poor,—Highway Rate,—Surveyors of Highways,—Overseers of the Poor,

and Assistant Overseer,—Paid Officers, including the Officers of Workhouses,—Parish,—Parish Clerk,—Relieving Officer,—Sexton,—Vestry,—Watching and Lighting. In these several cases, I have treated of the appointment of these officers, have defined minutely their respective duties, have stated the penalties assigned by law for a neglect or defective execution of them, and have treated in fact of every matter incidental to the offices, with which I thought it would be necessary or desirable for these officers to be acquainted.

Church Rate, I have treated of, principally with reference to the duties of Churchwardens in respect of it. I have stated in what cases and for what purposes it may be made, and how made; and how payment of it may be enforced, either in the ecclesiastical court, or by summary proceeding before Justices of the Peace, with the necessary forms.

Churchwardens, their appointment, their rights and duties, and actions by or against them, are treated of. I have also shortly noticed Chapelwardens.

Clergymen of the Parish I have noticed as well: not that I would be understood as classing them with Parish Officers, but there are some of their duties in which their parishioners are more immediately interested,—baptism, marriage, and burials, and the entries thereof in the Register,—that I thought it would be desirable that I should notice.

Collectors of Highway Rate, their appointment and duties,—and Collectors of Poor Rate in Unions, and in Parishes which are not in Unions,—are treated of.

Constables are treated of, at considerable length : The Petty Constable, his appointment, his duty in apprehending offenders without warrant, and in apprehending them under a warrant, together with his duties in all other cases ; his fees, allowances, &c. ; his punishment for neglect of duty, and the manner in which the law protects him in the due exercise of his duty. I have treated also of Borough Constables :—County and District Constables,—Local Constables,—Constables under the Watching and Lighting Acts,—Private Constables,—Constables on Canals and Navigable Rivers,—and Special Constables.

Guardians of the Poor,—their election,—their meetings,—their contracts,—their duties,—and the appointment and duties of their Clerk, are fully treated of. I have also noticed Guardians of the Poor for single parishes, and Guardians under Local Acts.

Highway Rate, how made and levied, I have considered chiefly in reference to the duty of the Surveyors of the Highways in the making and levying of it.

Highways, so far as respects the officers appointed for the repairs, &c. of them :—Surveyors for single



parishes, &c.—Officers in large parishes,—Officers appointed in districts.—Their duties in repairing the highways,—in widening the highways,—in stopping up or diverting the highways,—in erecting direction posts, &c.—in removing snow and other obstructions,—in prosecuting for nuisances, &c.

Overseers of the Poor, their appointment;—their meetings;—their duty in relieving the poor in single parishes,—and in unions or under select vestries,—their duty in removing the poor,—their duty as to the poor-rate,—their duty as to pauper lunatics,—their duty as to apprenticing poor children, as to the licensing of beer-houses, as to the borough or county rate, as to burying of dead bodies, as to constables' lists, as to disorderly houses, gaming houses, &c., as to gaol passes, as to the list of voters for guardians, as to jury lists—as to the registration of parliamentary voters. Their accounts, and how audited,—by Justices of Peace,—by the Auditors of Unions,—and by District Auditors. Frauds and offences by them : frauds by them, with respect to settlements;—neglect of duty, disobedience of orders of justices, &c.,—embezzlement of money, &c.,—and being concerned in furnishing goods, &c., for the poor. Actions by and against them. Also, the appointment and duties of Assistant Overseer.

Paid Officers, their appointment and duties, &c. ;  
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—Relieving Officer;—Medical Officer;—Chaplain;  
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Relieving Officer.

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and appointed,—and their proceedings.

Watching and Lighting :—the adoption of the  
Act ;—the Inspectors, their Authority and Duties ;  
—the Rate ; —Watching ; —Lighting,—Fire En-  
gines.

All this, the reader will find fully treated of, in  
this work. As to the manner in which it is done,

I claim but little merit; it is written in a plain, simple style, intelligible to every one. I believe it to be correct, and if it be found useful I shall be perfectly satisfied.

J. F. A.

9, *King's Bench Walk, Temple,*  
*September, 1852.*

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# PARISH LAW.

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## CHURCH RATE.

1. *How made*, p. 1.
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### 1. *Church Rate, how made.*

*What, and in what cases*, 1.  
*The vestry meeting*, 1.

*The assessment*, 3.  
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*What, and in what cases.*] A church rate is a mode of raising the sums required for the necessary repairs of a parish church, for the ornament of it, and for the decent and orderly celebration of divine service and the administration of the sacraments therein. The rate or assessment itself is made by the churchwardens of the parish; but they must previously have the authority of the parish vestry to do so. The churchwardens of themselves cannot make a rate: the parishioners in vestry alone can decide that a rate shall be made, and the amount of it. But if the churchwardens neglect to call a meeting of the vestry for the purpose, the court of Queen's Bench may compel them to do so by mandamus; or if they contumaciously refuse to do it, they may be punished by the ecclesiastical court.

*The vestry meeting.*] When a church rate becomes necessary, the first proceeding of the churchwardens is to call a meeting of the parish vestry, as directed *post*, tit. "Vestry." They must then prepare estimates of the sums which will be required for necessary repairs, for the celebration of divine service, and the administration of the sacraments; and at the vestry meeting, they submit these estimates to the parishioners present, and move that a rate of so much in the pound (sufficient to raise the sums required) be made. The parishioners are bound by law to keep the body of the church in repair; but the parson is bound to repair the chancel, unless there be a custom to the contrary. The parishioners are also bound by law to provide everything necessary for the due

and orderly celebration of divine service, and the administration of the sacraments. But as to all expenses not necessary to be incurred for these purposes,—for matters of mere ornament, the salary of an organist, or the like,—it seems to be optional with the vestry whether they will sanction them with their vote or not. The sum to be raised by the rate, also, is very much in the discretion of the vestry; but there is in general little use in voting a sum which is inadequate for the purposes for which it is intended, as the churchwardens, after collecting and expending that, may call another vestry meeting for the making of a further rate, to complete the necessary repairs, &c. If, on the other hand, a majority of the vestry refuse to make any rate, no rate of course can be made. This point has been long in litigation in the ecclesiastical courts, and in the courts at Westminster, in the case of *Gosling v. Veley and Joslin*, usually called the “Braintree case.” It may be necessary to state shortly the facts of that case. In 1837, the parish church of Braintree was in a dilapidated state, for want of necessary repair, no rate having been made for the purpose since 1834, a majority of the vestry having from time to time refused to sanction it: at a vestry meeting in 1837, the majority again refused a rate, and the churchwardens then, out of vestry, made a rate for the purpose, which was holden to be bad, as they of themselves had no authority to make it: in 1841, proceedings were had in the consistorial court, at the instance of the vicar, to compel the repairs, and the churchwardens and the parishioners were cited to appear before the vicar-general, to show cause why a monition should not issue—against the churchwardens, to take the necessary steps for putting the church in repair, and providing necessaries for the decent celebration of divine service, and to call a vestry meeting for the purpose,—and against the parishioners to meet in vestry, and make a rate for those purposes: the churchwardens appeared, the parishioners did not, and accordingly a monition was decreed; the churchwardens, having no funds for these purposes, called a vestry meeting, which was numerously attended, and the churchwardens having laid before the meeting the proper estimates, moved that a rate of 2s. in the pound should be made; the quantum of the rate was not objected to, nor the dilapidated state of the church denied, but an amendment was moved, stating the injustice of requiring dissenters to contribute to the maintenance of the established church, and that they felt bound by religious principle not to make a rate, and did refuse accordingly,—which amendment was carried by a large majority; the minority then, with the churchwardens, in obedience to the monition, made a rate of 2s. in the pound, which was protested against by the majority; this rate being duly allowed, the churchwardens proceeded to enforce it, by suing Gosling, one of the

parishioners, rated in the ecclesiastical court, who, upon the sum at which he had been rated being demanded of him, had refused to pay it; the judge of the consistorial court rejected the libel, thereby deciding against the churchwardens, but upon appeal to the court of arches, that decision was reversed: upon this Gosling applied to the court of Queen's Bench for a prohibition, and upon his declaring in prohibition, the churchwardens demurred to the declaration; the court of Queen's Bench decided in favour of the demurrer, thereby holding that the minority had a right to make the rate, where the majority had refused to make it, saying that it had a strong analogy to an election of a corporation officer, where an elector who votes for a person known to be ineligible, or refuses to vote at all, is holden to concur in the acts of those who vote for the eligible candidate (16 *Law J.* 201, *qb.*); this judgment of the court of Queen's Bench was affirmed in error by the court of Exchequer chamber (19 *Law J.* 111, *qb.*); but upon a further writ of error by Gosling, the person rated, to the House of Lords, their lordships delivered judgment, reversing the judgments of the Exchequer and the Queen's Bench; and now it is held, that though the majority of a vestry refuse to make a church rate where it is their duty to make it, and they are lawfully required to do so, nevertheless the power of making the rate does not devolve upon the minority.

*The assessment.*] The rate being granted by the vestry, it is the duty of the churchwardens to make the assessment. The form of it, as given in 1 *Burn, Ecc. Law*, 385, is thus:—

*We the churchwardens and other parishioners of the parish of —, in the county of —, and diocese of —, whose names are hereunto subscribed, do hereby this — day of —, in the year —, at our vestry meeting for that purpose assembled, rate and tax all and every the inhabitants and parishioners of the parish aforesaid, hereunder mentioned, for and towards the repairs of the church of the said parish, for the present year, the several sums following. viz.:—*

<i>A.B.</i>	-	-	-	-	£1	2	0
<i>C.D.</i>	-	-	-	-	0	3	0
<i>E.F.</i>	-	-	-	-	0	2	6

*And so on.*

<i>G.H.</i>	}	<i>Churchwardens.</i>
<i>I.K.</i>		
<i>L.M.</i>	}	<i>Parishioners.</i>
<i>N.O.</i>		
<i>P.Q.</i>		
<i>R.S.</i>		
<i>&amp;c.</i>		

This is usually made out before, and produced at the meeting, as soon as the vestry have decided on granting the rate, and is then signed by the churchwardens and some of the parishioners. The form here given seems to be a very imperfect one; and in cases where it is likely to be disputed, it may be advisable to state it with somewhat more of certainty; and it is suggested that, in analogy to the form of a poor rate, it may be desirable in such a case to state, in one column, the name of the occupier or rate-payer, in another the description of the property in respect of which he is rated, in a third the estimated extent, in a fourth the rateable value, and in a fifth the amount of the rate at so much in the pound. All this may fairly be borrowed from the poor rate of the parish; for the church rate is to be assessed upon all occupiers of land or houses in the parish, whether they reside there or not (1 *Burn, Ecc. Law*, 379, 380), in like manner as the poor rate; and persons not having land or house may in strictness be rated in respect of their personal property (*Id.* 384), which however in practice is not done, unless warranted by custom. The rector or vicar however is not chargeable to the church rate, in respect of the rectory or vicarage, as he is bound to repair the chancel; but an impropriator of a rectory, although bound to repair the chancel, is also bound to contribute to the repairs of the body of the church. *Id.* 383. But it is no excuse that a party rated is an inhabitant of a chapelry, and is rated and contributes to the repairs, &c. of the chapel (*Id.* 304, 383); or that he is an inhabitant of a district in which there is a district church, and that he contributes to the repairs, &c. of that church, unless he be specially exempted by the church-building Acts. The rate being made is then confirmed by the ordinary, as of course, unless a caveat be lodged against it. If the small tenements' rating Act (13 & 14 Vict. c. 99), be adopted in the parish, and the owners of tenements the yearly rateable value whereof does not exceed 6*l.*, be rated instead of the occupiers, care must be taken not to rate them to the church rate, for that Act only applies to the poor rate and highway rate.

*Chapel rate.*] The repairs of a chapel [either a chapel of ease or a parochial chapel] are to be made by rates on the landholders within the chapelry, in the same manner as the repairs of a church; and such rates are enforced in the same manner as church rates; and there shall be the like appeals to the ordinary, for unequal assessments. 1 *Burn, Ecc. Law*, 305. But this must be understood of ancient chapels, and where this course has been used; for if there be land given for the repair of such chapels, or any land or estate charged by prescription to the repairs of them, then the custom must be observed. *Id.* We have already seen (*supra*), that paying these chapel rates

does not exempt the party from being rated to and paying church rates.

**2. Payment of Church Rate, how enforced.**

<i>In the ecclesiastical court, 5.</i>	<i>Order, 8.</i>
<i>Before justices of the peace, 5.</i>	<i>Warrant of distress, 9.</i>
<i>Complaint, 6.</i>	<i>Appeal, 11.</i>
<i>Summons, 6.</i>	

*In the ecclesiastical court.]* If the validity of the rate be contested (*Boddenham v. Ricketts*, 4 Ad. & El. 433), or if the sum at which the party is rated exceed 10*l.*, or 50*l.* in the case of a Quaker, the payment can only be enforced by suit in the ecclesiastical court. But if the sum demanded do not exceed the sums here mentioned, and the validity of the rate be not contested, the payment may be enforced by two justices of the peace in a summary way, and the ecclesiastical court in that case has no jurisdiction. *Richards v. Dyke*, 2 Gale & D. 493. As to the proceedings in the ecclesiastical court for this purpose, it is not my intention to notice them; the churchwardens, if necessary, will employ a proctor to institute them. We shall confine our attention here to the mode of proceeding before justices of the peace for recovery of them.

*Before justices of the peace.]* By stat. 53 G. 3, c. 127, s. 7, if any one, duly rated to a church rate or chapel rate, the validity whereof has not been questioned in any ecclesiastical court, shall refuse or neglect to pay the same sum at which he is so rated, it shall and may be lawful for any one justice of the peace of the same county, riding, city, liberty, or town corporate, where the church or chapel is situated, in respect whereof such rate shall have been made, upon the complaint of any churchwarden or churchwardens, chapelwarden or chapelwardens, who ought to receive and collect the same, by warrant under the hand and seal of such justice, to convene before any two or more such justices of the peace, any person so refusing or neglecting to pay such rate, and to examine upon oath into the merits of the said complaint, and by order under their hands and seals to direct the payment of what is due and payable in respect to such rate, so as the sum ordered and directed to be paid as aforesaid do not exceed 10*l.* [or 50*l.* in the case of Quakers, *Id.* s. 5, and 5 & 6 W. 4. c. 74], over and above the reasonable costs and charges, to be ascertained by such justices. 53 G. 3, c. 127, s. 7.

As the justices in this case are authorized to make an order, on complaint, the proceedings may be according to Jervis's Act, stat. 11 & 12 Vict. c. 43.

The following may be the form of the

*Complaint.*

—— } *Be it remembered that, on the —— day of ——*  
*to wit. } in the year of our Lord ——, the churchwardens*  
*of the parish of ——, in the [county] of ——, by C. D., one*  
*of the said churchwardens, complain to the undersigned, one*  
*of Her Majesty's justices of the peace in and for the said*  
*[county] of ——, in which the church of the said parish is*  
*situated, that A. B., of the said parish, being a person duly*  
*rated and taxed for and towards the repairs of the church*  
*of the said parish, in and by a church rate made on the ——*  
*day of ——, in the year ——, in the sum of —— (and the*  
*validity of which said rate hath not been questioned in any*  
*ecclesiastical court), hath refused and neglected, and still*  
*doth refuse and neglect to pay the same sum at which he is*  
*so rated and taxed as aforesaid: Wherefore the said church-*  
*wardens, who ought to receive and collect the same, by C. D.*  
*aforesaid, pray that the said A. B. may be convened and*  
*summoned to appear before two or more justices of the said*  
*[county], to show cause why he hath not paid and refuses to*  
*pay the said sum.*

C. D.

*Exhibited before me, this ——*  
*day of ——, 18——, at ——, in the*  
*county of ——.* *E. F.*

This complaint may be made by any one of the churchwardens for the time being, although they were not in office at the time the rate was made; because they are the persons "who ought to receive and collect" the rate.—See *R. v. Fenton*, 1 Q. B. 480. *R. v. Bidwell*, 11 Shaw's J. P. 774. *R. v. St. Clement's*, 12 Ad. & El. 177.

The following may be the form of the

*Summons.*

*To A. B., of ——, [farmer].*

*Whereas complaint hath this day been made before the undersigned, one of Her Majesty's justices of the peace in and for the county of ——, in which the church of the parish of —— in the said county is situated, by the churchwardens of the said parish, for that you, being a person duly rated and taxed for and towards the repairs of the church of the said parish, in and by a church rate made on the —— day of ——, in the year ——, in the sum of —— (and the validity of which said rate hath not been questioned in any ecclesiastical court), have refused and neglected, and*

*still refuse and neglect to pay the said sum at which you are so rated and taxed as aforesaid: These are therefore to command you, in Her Majesty's name, to be and appear on —, at — o'clock in the forenoon, at —, before such two or more justices of the peace for the said county as may then be there, to answer to the said complaint, and to be further dealt with according to law.*

*Given under my hand and seal, this — day of —, in the year of our Lord —. at —, in the county aforesaid.*

*E. F. (L. S.)*

At the time appointed by the summons, the churchwardens or one of them appear before the justices, produce the rate,—prove that the validity of it has not been questioned in any ecclesiastical court,—show that the defendant is rated in it at the sum mentioned,—and prove that such sum has been demanded of him, and that he has refused or neglected to pay it. This proof must be upon oath.

The defendant then enters upon his defence, if he have any. It is provided by the statute 53 G. 3, c. 127, s. 7, that if the validity of the rate, or the liability of the defendant to pay it, be disputed, and the defendant give notice thereof to the justices, the justices shall forbear giving judgment thereupon; and the churchwardens may then “proceed to the recovery of their demand, according to the due course of law as heretofore used and accustomed,” that is to say, by suit in the ecclesiastical court. It is not necessary, however, in order to bring the case within this proviso, and prevent the justices deciding the matter, that the validity of the rate should at the time be disputed in the ecclesiastical court; it is sufficient that the defendant states to them or gives them notice that he disputes the validity of the rate (*R. v. Milnrow*, 5 M. & S. 248), and also states, if required, his reasons for disputing it, in order that the justices may judge whether his objections be *bonâ fide*.—*R. v. Wrottesley*, 1 B. & Ad. 648. In a case where it appeared that the validity of the rate was *bonâ fide* disputed, the magistrates adjourned the hearing for a month, in order that the defendant might take proceedings in the ecclesiastical court to dispute the validity of the rate; on the adjourned day the defendant attended, but had not taken any steps in the ecclesiastical court; the magistrates then made an order that he should pay the rate, but refused to issue a distress warrant to enforce it: on application to the court of Queen's Bench to compel the magistrates to issue their warrant, under the 11 & 12 Vict. c. 44, s. 5, which exonerates magistrates from personal liability, if they act in obedience to a rule granted by the court, it was held not to be a case in which the court ought to interfere, for the magistrates are deprived of jurisdiction



if the objection to the validity of the rate is made *bond fide*. *Reg. v. Collins and another*, 16 J. P. 230 ; 21 Law J. 73, m. If the defendant do not object to the rate at the hearing, he will not be allowed to object to its validity at any future stage of the proceedings, as for instance, in an action for replevin for the taking of his goods under a warrant of distress for the rate (*Ramsbottom v. Duckworth et al.*, 19 Law J. 73, m. ; 1 Ex. 506), or the like. Where it was objected that the churchwardens had sued the defendant for the very same church rate in the consistorial court, but it was shown on the part of the churchwardens that they had abandoned that suit before they made the present complaint, it was holden that the jurisdiction of the justices was not thereby ousted or affected. *R. v. St. Clement's*, 12 Ad. & El. 177.

The following may be the form of the

#### *Order.*

——— } *Be it remembered that on ——, complaint was to wit. } made before E. F., esquire, one of Her Majesty's justices of the peace in and for the county of ——, in which the church of the parish of ——, in the said county, is situated, by the churchwardens of the said parish, that A. B., of the said parish, being a person duly rated and taxed for and towards the repairs of the church of the said parish, in and by a church rate made on the —— day of ——, in the year ——, in the sum of —— (and the validity of which said rate had not been questioned in any ecclesiastical court), had refused and neglected, and did then still refuse and neglect to pay the said sum at which he was so rated and taxed as aforesaid: And now at this day, to wit, on ——, at ——, the said churchwardens and the said A. B. appear before us, the undersigned, two of Her Majesty's justices of the peace in and for the said county of ——; and now, having heard the matter of the said complaint, we do adjudge the said A. B. to pay to the said churchwardens the sum of —— within seven days after the same shall be legally demanded of him, and also to pay to the said churchwardens the sum of —— for their costs in this behalf; and if the said several sums be not paid within seven days after the same shall be legally demanded of the said A. B., we hereby order that the same be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf, we adjudge the said A. B. to be imprisoned in the [house of correction] at —— in the said county, for the space of [three calendar months], unless the said several sums, and all costs and charges of the said distress [and of the commitment and conveying of the*

*said A. B. to the said house of correction] shall be sooner paid.*

*Given under our hands and seals, this — day of —, in the year of our Lord —, at —, in the county aforesaid.*

*G. H. (L. s.)*

*I. K. (L. s.)*

Upon refusal or neglect of such party to pay, according to such order, within seven days after the amount shall have been legally demanded of him, his goods and chattels may, by warrant under the hand and seal of any one of such justices, be distrained for it, not only in the district, parish, &c., for which the rate was made, but within any other district, parish, &c., within the same county or jurisdiction; and if sufficient distress be not found within the same county, &c., then upon oath made thereof before a justice of any other county, &c., in which goods of the party shall be found, and his indorsing his name upon the warrant, the goods of the party may be distrained in such other county, &c., and sold, and the surplus rendered to the party, first deducting therefrom the necessary charges of distraining, to be allowed by the justice. 53 G. 3, c. 127, s. 7; 54 G. 3, c. 170, s. 12. As to the award of imprisonment, in default of distress, it is in pursuance of the general provision to that effect, in stat. 11 & 12 Vict. c. 43, s. 22 (Jervis's Act). As to the term of imprisonment, the 12 & 13 Vict. c. 14, s. 9, after reciting that "whereas it is desirable to limit the time within which a person assessed to a church rate may be imprisoned for non-payment of the same," enacts that every person now undergoing any such imprisonment, shall be discharged from such imprisonment so soon as he or she shall have been imprisoned three calendar months, or shall sooner pay the sum or sums with which he or she is charged, and that hereafter (from the 11th of May, 1849), no person shall be imprisoned for the non-payment of any church rate for any time exceeding three calendar months.

The following is the form of the

*Warrant of Distress.*

*To the constable of —, and to all other peace officers in the said county of —.*

*Whereas on — last past, a complaint was made before E. F., esquire, one of Her Majesty's justices of the peace in and for the said county of —, in which the church of the parish of —, in the said county, was situated, by the churchwardens of the said parish, that A. B., of the said parish, being a person duly rated and taxed for and towards the repairs of the church of the said parish, in and by a church rate made on the — day of —, in the year —,*

*in the sum of — (and the validity of which said rate had not been questioned in any ecclesiastical court), had refused and neglected, and did then still refuse and neglect to pay the said sum at which he was so rated and taxed as aforesaid: And afterwards, to wit, on —, at —, the said churchwardens and the said A. B. appeared before G. H. and I. K., esquires, two of Her Majesty's justices of the peace in and for the said county, and the said last-mentioned justices having considered the matter of the said complaint, adjudged that the said A. B. should pay to the said churchwardens the sum of — within seven days after the same should be legally demanded of him, and should also pay to the said churchwardens the sum of —, for their costs in that behalf; and that if the said several sums should not be paid within seven days after the same should be legally demanded of the said A. B., the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged that in default of sufficient distress in that behalf, the said A. B. should be imprisoned in the [house of correction] at —, in the said county, for the space of [three calendar months], unless the said several sums, and all costs and charges of the said distress [and of the commitment and conveying of the said A. B. to the said house of correction] should be sooner paid: And whereas it is now proved on oath to me the undersigned, one of Her Majesty's justices of the peace in and for the said county, that the said several sums of — and — were on — legally demanded of the said A. B. by the said churchwardens, and whereas the time in and by the said order appointed for the payment of the same hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of four days after the making of such distress the said last-mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels, so by you distrained, and do pay the money arising from such sale unto —, the clerk of the justices of the peace for the division of —, in the said county, that he may pay and apply the same as by law directed, and may render the overplus, if any, to the said A. B.; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.*

*Given under my hand and seal this — day of —, in the year of our Lord —, at —, in the county aforesaid.*

*J. S. (L. S.)*

*Appeal.*] Any person finding himself aggrieved by the judgment given by two or more such justices, as above mentioned, may appeal to the next general quarter sessions for the county, &c. wherein the church or chapel shall be situate, with respect to which the rate shall have been made; and if such judgment be affirmed, it shall be with costs against the appellant, to be recovered by distress and sale: provided that, in case of appeal, no warrant of distress shall be issued until after the appeal be determined. 53 G. 3, c. 127, s. 7. It is not necessary in this case to give notice of appeal to the justices making the order; it is sufficient to give it to the churchwardens. *R. v. Justices of Staffordshire*, 4 Ad. & El. 842.

# CHURCHWARDENS.

<i>Who may be chosen</i> , 11.	<i>Actions, &amp;c. by and against them</i> , 13.
<i>When and by whom chosen</i> , 11.	
<i>Their rights and duties</i> , 12.	
	<i>Churchwardens in new districts</i> , 13.

*Who may be chosen.*] Churchwardens are parish officers, appointed for keeping the parish church in repair and good order, for providing for the decent and orderly performance of divine service and administration of the sacraments, and for the preservation of the goods of the church. They have also other duties assigned to them by statute. They must be rate-payers, and householders in the parish, though perhaps not necessarily resident in it. If a protestant dissenter or roman catholic be appointed, and scruple to take the oath or serve, he may serve the office by deputy. 1 W. & M. c. 18; 31 G. 3, c. 32, s. 7. But an alien cannot be churchwarden; and peers are exempt from serving the office; so are members of the House of Commons, clergymen, attorneys, officers of the different courts of law and equity, and apothecaries. 1 *Burn, Ecc. L.* 399, 400.

*When and by whom chosen.*] They are to be chosen in the first week after Easter (*Can.* 90); and sworn into office in that week or in some week following, according to the direction of the ordinary (*Can.* 118); and they continue in office until other churchwardens appointed to succeed them have been sworn in. *Id.*

There are usually two: appointed either by the minister and the parish vestry jointly; or if they cannot agree, the minister then shall choose one, and the parish vestry the other. *Can.* 89. But by custom there may be more than two, and differently chosen from the manner here mentioned; and where there is

such a custom, the custom, not the canon, must be observed. 1 *Burn, Ecc. L.* 401–403; and see *Gibbs v. Flight*, 16 Law J. 136, *cp.*

Upon the churchwarden being thus chosen, he is sworn into office before the archdeacon or other ordinary. The oath administered is thus: "You shall swear, truly and faithfully to execute the office of a churchwarden within your parish, and according to the best of your skill and knowledge present such things and persons as to your knowledge are presentable by the laws ecclesiastical of this realm: so help you God, and the contents of this book." 1 *Burn, Ecc. L.* 404. If the ordinary refuse to swear him, a mandamus will lie to compel him; or if the party chosen refuse to attend to be sworn, and to take upon himself the office, he may be libelled in the ecclesiastical court and excommunicated. *Id.* 403.

*Their rights and duties.*] Churchwardens are *ex officio* overseers of the poor of their parish (43 El. c. 2, s. 1) where the poor are maintained by the parish, and not by townships or hamlets within it. And they, together with the overseers yearly nominated and appointed by the justices, form one body of overseers of the poor, and exercise all the powers and authorities and perform all the duties assigned to them in that character, by statute, and by the rules and orders of the poor law commissioners. See 3 *Arch. J. P. passim*. As overseers, also, they and the appointed overseers of the poor, and their successors, are made a body corporate, so far as respects the taking and holding of workhouses and lands purchased by them in trust for the parish. 59 G. 3, c. 12, s. 17. As churchwardens also they are in some respect a *quasi* corporate body; and the goods of the church vest in them and their successors in office, and they may maintain actions in respect of them; but they cannot dispose of them, without the consent of the parish. 1 *Burn, Ecc. Law*, 408. As churchwardens, they must keep the church in proper repair, and provide every thing necessary for the decent and orderly performance of divine service and the administration of the sacraments, and for that purpose, with the assent of the parish vestry, must if necessary lay a church rate. See *ante*, p. 1. As churchwardens, also, they must, at the end of the year, or within a month after it, before the minister and parishioners, render a due account of all moneys received and paid by them, and hand over any balance which may remain in their hands (1 *Burn, Ecc. L.* 411–413); and if it appear that they have made or authorized any illegal or fraudulent payment from the church rate, they are liable to a penalty not exceeding 20*l.*, and treble the amount of the payment so made. 7 & 8 Vict. c. 101, s. 32. Amongst the duties of churchwardens, also, is that of making presentments at the annual visi-

tations, of all public and notorious excesses of prelates and other clerks, and of all offences punishable by the ecclesiastical law, committed by any of the parishioners during the year of office. 1 *Burn, Ecc. L.* tit. "*Visitation.*"

Churchwardens and overseers of the poor are also *ex officio* members of the select vestry, where such a vestry is established in a parish. 59 G. 3, c. 12, s. 1. It is the duty of the churchwardens and overseers also, every year, to make out the jury lists, and to affix a copy on the church door on the first three Sundays in September. 6 G. 4, c. 50, ss. 8, 9.

*Actions, &c. by and against them.]* Churchwardens may bring actions respecting the goods of the church, in like manner as any owner of goods may do. They may also sue in the ecclesiastical court or before justices of the peace for arrears of church rate. *Ante*, p. 5. This, however, must be done during the time they are exercising their office; after they go out of office, they cannot sue for church rate, though made and payable during their year, or sue for any injury to the goods of the church during their year; such suit or action must be brought by their successors. 1 *Burn, Ecc. L.* 413, 414. But if they commence such suit or action during their year of office, they may continue it afterwards. *Id.* If sued for anything done by them as churchwardens, they may plead the general issue and give the special matter in evidence; and if they obtain a verdict, they shall have full costs as between attorney and client. 7 Jac. 1, c. 5; 21 Jac. 1, c. 12; 5 & 6 Vict. c. 97, s. 2. As to actions against them as overseers of the poor, see 3 *Arch. J. P.* 49.

*Churchwardens in new districts.]* The appointment of churchwardens and chapelwardens for the churches or chapels built under the several church building Acts, is regulated by those Acts respectively. See stat. 59 G. 3, c. 45, s. 73; 59 G. 3, c. 134, s. 30; 1 & 2 W. 4, c. 38, s. 25; 6 & 7 Vict. c. 37, s. 17; 8 & 9 Vict. c. 70, ss. 6, 7. One is usually appointed by the incumbent, the other by the vestry or pew renters.

#### CLERGYMEN OF THE PARISH.

*Who*, 13.

*Advowson* 14.

*Tithes*, 23.

*The rights and privileges of clergymen*, 35.

*Their duties*, 36.

The parish clergymen are—the parson or rector when incumbent, or the vicar and the curate. The parson or rector is clerical or lay: when a clergyman he is called the incumbent; when a lay person, he is called the impropriator; and in the

latter case, a vicar is appointed and endowed, for the purpose of performing the ecclesiastical duties in the parish. The curate is an assistant to the rector or vicar.

*Advowson.*] An advowson is the right of presenting to a church or ecclesiastical benefice (2 *Bl.* 21; 3 *Cr. t.* 21, c. 1, ss. 4, 5), upon any vacancy which may occur during the continuance of the party's title. It is said to be appendant, when the right is annexed to a manor, and always passes with it (2 *Bl.* 22; 3 *Cr. t.* 21, c. 1, ss. 8–11); or in gross, when it is not so annexed, but has been separated from it (2 *Bl.* 22; 3 *Cr. t.* 21, c. 1, ss. 12–18).

Advowsons are also said to be presentative, collative, and donative:—presentative, where the patron has the right to present to the bishop or ordinary, and to demand of him that he institute his clerk, if he find him canonically qualified (2 *Bl.* 22; 3 *Cr. t.* 21, c. 1, s. 19);—collative, where the bishop and patron are one and the same person (2 *Bl.* 22; 3 *Cr. t.* 21, c. 1, s. 20):—donative, where the Queen, or any subject by her licence, founds a church or chapel, and ordains that it shall be in the gift or disposal of the patron, subject to his visitation only and not that of the ordinary, and vested absolutely in the clerk by the patron's deed of donation, without presentation, institution or induction (2 *Bl.* 23; 3 *Cr. t.* 21, c. 1, s. 21), but which ceases to be donative, if the patron, waiving his right of donation, present at any time a clerk to the bishop (2 *Bl.* 23, 24; 3 *Cr. t.* 21, c. 1, s. 22).

An advowson, like all other incorporeal hereditaments, is not capable of corporeal seisin or possession; but until the church becomes void, it is impossible to acquire in it any thing more than a seisin in law (3 *Cr. t.* 21, c. 1, s. 23); and therefore in pleading any incorporeal hereditament, we do not say that the owner is seised *in his demesne* as of fee, but merely that he is seised as of fee and right, omitting the words “in his demesne.”—*Arch. Pl. & Ev.* 121. In other respects, a person may have the same estate in an advowson, as in a corporeal hereditament,—he may be tenant in fee simple, having the right of presentation in him and in his heirs for ever;—or he may be tenant in tail, having the right of presentation in himself and his issue;—or he may have it for life or years;—he may be entitled to it in possession, remainder or reversion;—and it may be holden in joint tenancy, coparcenary or in common. 3 *Cr. t.* 21, c. 1, ss. 24, 25. A husband may be tenant by the curtesy of an advowson, even although the church have not been void during the coverture. *Id.* ss. 26–28. So, a widow may be tenant in dower of an advowson: if it be an advowson in gross, she is entitled to the third presentation (*Id.* ss. 29, 30); if an advowson appendant, and she be endowed of the manor, she shall be entitled to it

of course, and if the church become vacant during the continuance of her estate, she may present to it, or if she be endowed of the third part of the manor, the third part of the advowson shall pass. *Id.* s. 29. Advowsons may be extended under an elegit (1 & 2 Vict. c. 110, s. 13); and are assests for payment of debts. 3 *Cr. t.* 21, c. 1, ss. 40–42.

When a vacancy occurs in a parsonage or vicarage, the patron, to whom the advowson of the church then belongs, may present his clerk, that is to say, may offer his clerk to the bishop of the diocese to be instituted (1 *Bl.* 389; 3 *Cr. t.* 21, c. 2, ss. 1–3). The bishop however may refuse him,—either in case the patron be excommunicated and remains in contempt forty days (1 *Bl.* 389),—or where the clerk himself is deemed unfit for the sacred office, as being an outlaw, or under age, or being objectionable in respect of faith or morals, or as being deficient in learning. 1 *Bl.* 389, 390; 3 *Cr. t.* 21, c. 2, ss. 46–48. If, on the contrary, the bishop declare that he approves of the presentee, the clerk is then said to be admitted. 3 *Cr. t.* 21, c. 2, s. 4. The clerk is next instituted, that is to say, the cure of souls is committed to him by the ordinary, and which ceremony is performed thus: the clerk kneels before the ordinary, whilst the latter reads the words of the institution, out of a written instrument drawn up for the purpose, with the episcopal seal appendant to it, which instrument the clerk holds in his hand during the ceremony. 3 *Cr. t.* 21, c. 2, s. 5.

The induction next follows, being the investiture of the temporal part of the benefice, as institution is of the spiritual. It is done by mandate from the bishop to the archdeacon, who usually issues a precept to other clergymen to perform it for him: and the ceremony is thus,—the inductor and clerk being at the church, the former takes the clerk's hand and lays it upon the ring of the church door, and says to this effect,—“by virtue of this mandate, I do induct you into the real, actual and corporeal possession of the church of C., with all the rights, profits and appurtenances thereunto belonging;” the inductor then opens the door, puts the clerk into the church, and the latter usually tolls the bell, to make his induction known to his parishioners. *Id.* ss. 7, 8. This completes the clerk's title: before presentation he has no right; by presentation, he acquires a right to the benefice; by institution, he acquires a right to enter on the glebe, take the tithes, &c.; and by induction he acquires a right to sue in respect of them. *Id.* s. 6. He is *quasi* tenant for life; and if he manure and sow with corn any part of his glebe, he will be entitled to emblements, and they will pass by his will. 1 *Cr. t.* 3, c. 1, ss. 55, 56.

As to the party entitled to present the clerk;—the tenant in fee, fee tail, for life or years, if the vacancy occur in his



lifetime and during the continuance of his estate, is the party to present (3 Cr. t. 21, c. 2, ss. 18, 19); if he die after the vacancy and before presentation, the right (being deemed a chattel real) goes to his executors or administrator, not to his heir. *Id.* s. 20. So, where a person has a grant of the next presentation, this is a chattel real; and if there be no vacancy during his lifetime, the right to present goes to his executors or administrator. 3 Cr. t. 21, c. 2, s. 21. Infants may present. *Id.* ss. 22–24. A husband entitled in right of his wife, presents in the names of both. *Id.* s. 18. Joint-tenants and tenants in common should present jointly; if they present severally, the ordinary may refuse to admit the presentee (*Id.* ss. 25, 26); or if they make partition, they present in turns, as may have been agreed upon. *Id.* ss. 32–34; 7 Anne, c. 18, s. 2. Coparceners present jointly; or if they cannot agree in the presentation, they may present in turn, the eldest sister presenting first, and then the others in their order. *Id.* ss. 27–31. Mortgagors may nominate, but the mortgagee is the person to present, as he has the legal estate (*Id.* ss. 35, 36); and the same as to tenants by statute staple or statute merchant, or elegit. *Id.* s. 37. Bankrupts, when owners of an advowson or next presentation, have a right to present upon a vacancy occurring before it is sold. 3 Cr. t. 21, c. 2, s. 38. But an alien cannot present (*Id.* s. 39); nor a person outlawed (*Id.* s. 40); nor a Roman Catholic, the presentation to all benefices belonging to him being vested in the universities of Oxford or Cambridge. *Id.* ss. 41–44. Where a lunatic is entitled to present, the lord chancellor presents for him. *Id.* s. 45.

The right of presentation, and that of nomination to a church, are distinct things: presentation is the offering of a clerk to the bishop; nomination, an offering of the clerk to the patron for presentation. 3 Cr. t. 21, c. 1, s. 6. And these rights may exist in different persons: for instance, a person seised of an advowson may grant to A. and his heirs, that whenever the church becomes vacant he will present to the bishop such person as A. or his heirs shall nominate. *Id.* Or, where the legal estate in the advowson is in a trustee, and the right of nomination is in the *cestui que trust*, the one must present according to the other's nomination. *Id.* s. 7. So, where there is mortgagor and mortgagee of an advowson, the former may nominate, but the latter must present. *Id.* s. 7; *Id.* c. 2, s. 35.

The right of presentation *pro hac vice* may be forfeited, either by lapse, or by simony.

Lapse is a species of forfeiture of the right of presentation to an ecclesiastical benefice, *pro hac vice*; if the patron do not present within six calendar months after avoidance, the ordinary may present; and if the ordinary fail to present within

six calendar months after his title by lapse accrues, the metropolitan may present; and if the metropolitan neglect to present within six calendar months after his title accrues, the Queen may present. 2 *Bl.* 276; 3 *Cr. t.* 21, c. 2, ss. 10-13. But there is no forfeiture by lapse, where the original presentation is in the Crown (2 *Bl.* 276); nor can a donative lapse to the ordinary, unless it have been augmented by Queen Anne's bounty. *Id.* On the other hand, if the bishop be both patron and ordinary, he shall not have a double time allowed to him to present, but if he do not present within the six calendar months, the metropolitan may present; and in ordinary cases if he do not present by lapse at the expiration of the six calendar months allowed to the patron, and the patron afterwards presents before the bishop, the patron's presentation will be good. *Id.* 277; 3 *Cr. t.* 21, c. 2, s. 16. Where the benefice becomes void by death, or by cession through plurality of benefices, there the patron is bound to take notice of the vacancy at his peril; but when the vacancy arises from resignation, or canonical deprivation, or if a clerk presented be refused for insufficiency, these being matters of which the bishop alone is supposed to be cognizant, the law requires him to give notice thereof to the patron, otherwise he shall not avail himself of the lapse. 2 *Bl.* 278; 3 *Cr. t.* 21, c. 2, ss. 14, 15. Also, if the bishop refuse or neglect to examine and admit the patron's clerk, without good reason assigned or notice given, he shall not present by lapse. 2 *Bl.* 278. And lastly, if the right of presentation be contested, and an action brought to try the right, there shall be no lapse until the question is decided. *Id.*

Simony is the corrupt presentation of any person to an ecclesiastical benefice, for money, gift or reward, or promise thereof (*Id.* 278); such presentation is void, the right of presenting *pro hac vice* is forfeited to and vested in the crown (2 *Bl.* 278; 3 *Cr. t.* 21, c. 2, ss. 52-68), and the presentee is for ever after incapable of enjoying the same benefice. 31 *El. c.* 6. But if the presentee die, without being convicted of such simony in his lifetime, the simoniacal contract shall not prejudice any other innocent patron, on pretence of lapse to the Crown or otherwise. 1 *W. & M. c.* 16. Also, if any person, for money or profit, shall procure in his own name or the name of any other the next presentation to any benefice, and shall be presented thereupon, this is a simoniacal contract, and the party is not only liable to all the ecclesiastical penalties for simony, but is disabled from holding the benefice, and the presentation devolves to the Crown. 12 *Anne, st.* 2, c. 12. *Fox v. Bp. of Chester*, 2 *B. & C.* 635. But if a father purchase a next presentation for his son (2 *Bl.* 280), or even if a person purchase it for a stranger (3 *Cr. t.* 21, c. 2, s. 60), it is not simony unless the then incumbent be in

*extremis* (*Id.* s. 70); or if a simoniacal contract be made with the patron, without the privity of the clerk,—although the presentation for that term shall devolve to the crown, as a punishment of the guilty patron, yet the clerk, who is innocent, does not incur any disability or forfeiture. 2 *Bl.* 280. But a purchase of the whole advowson, although the then clerk be *in extremis*, is not simony. 3 *Cr. t.* 21, c. 2, s. 71. Also, although general bonds to resign at the patron's request have been holden void (*Bp. of London v. Ffytche*, 2 Bro. B. C. 811; 3 *Cr. t.* 21, c. 2, ss. 78–80), yet bonds to resign in favour of the patron's son or other relation, when ordained, are good. 2 *Bl.* 280. 7 & 8 G. 4, c. 25; 9 G. 4, c. 94.

*How aliened, when vested in trustees.]* By stat. 19 & 20 Vict. c. 50, s. 1, after reciting that it is expedient to authorize the sale of advowsons in cases where the same are vested in, or in trustees for, inhabitants, ratepayers, freeholders, or other persons, forming a numerous class, and deriving no pecuniary advantage therefrom, in order that the monies arising from such sales may be applied to the erection, rebuilding, or improvement (where necessary) of parsonage houses, and to the augmentation of the livings (where the same are small), and to other beneficial purposes as hereinafter provided; and that other powers should be conferred upon such persons; it is enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

I. Unless there be something in the subject or context repugnant to or inconsistent with such construction, the following words shall have in this section and elsewhere in this Act the respective meanings hereby assigned to them; that is to say,—

The word “advowson” means an advowson vested in inhabitants, ratepayers, freeholders, or other persons, forming a numerous class, or in trustees appointed by or acting on behalf of such persons, such persons deriving no pecuniary advantage from the exercise of such right, but does not mean an advowson belonging to any endowed charity within the provisions of “the Charitable Trusts Act, 1853,” and “the Charitable Trusts Amendment Act, 1855,” or either of them:

The word “owners” means the inhabitants, ratepayers, freeholders, or other class of persons in whom, or in trustees for whom, an advowson is vested, such persons deriving no pecuniary advantage therefrom:

The words “existing trustees” mean the trustees in whom for the time being an advowson is vested, by virtue of any Act of parliament, deed, or other instrument, in trust for

or on behalf of such owners, and includes the survivors and survivor of such trustees :

The words "elected trustees" mean the persons appointed by the owners under the provisions of this Act to effect the sale of an advowson, and includes the survivors and survivor of such trustees :

The word "trustees," without the addition of the words "existing" or "elected," includes both classes of trustees hereinbefore defined :

The word "incumbent" means the rector, vicar, or perpetual curate, as the case may be, of a church or ecclesiastical benefice, the advowson of which is to be dealt with under this Act, and includes the officiating clergyman for the time being if the incumbent reside abroad or be incapable of acting.

II. The owners of an advowson may direct the sale of such advowson ; and the incumbent for the time being of the church or benefice, if required in writing by ten owners, shall convene a meeting of the owners, to be held at some convenient place near to the church, for the purpose of deciding whether or not such advowson shall be sold ; and every such meeting shall be called by public advertisement, to be inserted once at least in four consecutive weeks in some newspaper circulating in the county and neighbourhood in which such church shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting, and notice of such meeting shall also, not less than fourteen days prior to the holding thereof, be affixed upon the door of such church.

III. At the meeting so called the incumbent for the time being (if present) shall be the chairman, and if he be absent, then one of the owners present, being appointed by the other owners present, shall be the chairman, and the decision of the majority of the owners then present shall bind the minority and all absent parties.

IV. Such meeting shall consider and determine the question whether the advowson shall be sold, and if that question be resolved in the affirmative, the existing trustees (if such there be) shall be the persons to execute the purposes of this Act ; but if there be no existing trustees, the owners shall proceed to appoint at that meeting, or at some adjournment thereof, not less than five nor more than eleven persons, being owners, to be "elected trustees" for the purposes of this Act, and the incumbent for the time being shall be *ex officio* an "elected trustee" in addition to the trustees so appointed.

V. A certificate under the hands of two justices (not being themselves owners) having jurisdiction in the parish, township, district, or place within which the church or benefice in question is situate, certifying that the consent of the owners to a

sale of the advowson has been duly obtained, and (in those cases where it is necessary that "elected trustees" be appointed) containing the names, residences, and description of the "elected trustees," shall be sufficient evidence of such consent and of such appointment, and any two justices having jurisdiction as aforesaid are hereby authorized and required, on application to them made, and on being duly satisfied of the truth of the facts, to certify accordingly.

VI. Immediately upon the grant of such certificate the advowson shall become absolutely vested in the trustees for the purpose of effecting such sale, freed from all the uses, trusts, and declarations for the benefit of, or otherwise relating to the owners then affecting the same, but subject to the right, title, estate, or interest (if any) of every other person therein; and the trustees shall, as soon thereafter as conveniently may be, sell the advowson by public auction or by private contract, and subject to any special conditions, as to them shall seem expedient, and may buy in the same at any auction, and re-sell the same by public auction or by private contract, without being answerable for any loss which may happen by such re-sale, and shall have full discretion in the premises, and may execute and do all contracts, deeds, and other acts necessary for effecting such sale.

VII. Any conveyance of an advowson in pursuance of this Act shall be by deed (duly stamped) under the hands and seals of any three of the trustees, in which the consideration shall be truly stated.

VIII. The receipt in writing of three of the trustees for any money paid to them by a purchaser of the advowson shall be an effectual discharge to such purchaser for the sum which in such receipt shall be acknowledged to be received, and such purchaser shall not be obliged to see to the distribution of such money, or be otherwise answerable or accountable for the loss, misapplication, or nonapplication thereof.

IX. The monies to be received by the trustees from or by means of such sale shall be applied by them in the following order:

1st. In payment of the costs, charges, and expenses occasioned by any meeting of owners as aforesaid, and by the execution of the powers by this Act conferred upon the trustees, or incident thereto, respectively:

2nd. If there be no parsonage house attached to the advowson so sold, or if the parsonage house attached thereto be dilapidated or insufficient, then in payment of the expense of erecting a parsonage house, and of providing a site for the same, or in the reconstruction or repair of the existing parsonage house, or in making any requisite additions thereto, as the circumstances of the case may require:

3rd. If the living be under the gross yearly value of one

hundred and fifty pounds, then in investing a sum sufficient to produce an annual income which, together with the existing annual income, will raise the yearly value of the living (exclusive of the parsonage house) to not exceeding one hundred and fifty pounds *per annum* :

4th. If the fabric of the church be in such a state as to require immediate repair, then in the expenditure upon the fabric of a sum sufficient to place the same in sufficient repair :

5th. In the investment of a sum the annual income whereof will, in the opinion of the trustees, be sufficient to maintain the fabric of the church in complete repair :

6th. In the erection of schools in connexion with the church, or of a chapel of ease in the parish, township, ecclesiastical district, or place in which such church is situate, or of a parsonage house to a chapel of ease, or in providing a site for a chapel of ease or parsonage house, or in the endowment of a chapel of ease, or in contributing to such objects or any of them, as the trustees may in their discretion see fit :

7th. If there be no such purposes to which such monies are applicable, or if there be a surplus of such monies after answering such purposes, then such monies, or the surplus thereof, as the case may be, shall be invested, and the annual income thereof shall be applied, in aid of the rates levied for the relief of the poor of the parish, township, or place in which the church is situate, or in aid of any improvement rate levied therein :

Provided always, that the owners at any meeting convened and held in manner hereinbefore provided may determine that any one or more of the objects mentioned in the fifth, sixth, and seventh heads of application respectively shall have priority over any other object mentioned in those heads.

X. The trustees shall from time to time invest any monies by this Act directed to be invested by them in the purchase of any government or Bank of England or East India Company's stock or securities, or on mortgage of freehold or copyhold lands in England or Wales, or in the mortgages or bonds of any company incorporated by special Act of parliament, as they may deem fit.

XI. The concurrence of two-thirds at least of the whole number of trustees shall be necessary to give effect to any resolution of the trustees, and every resolution of the trustees in which that number shall concur shall be binding upon the other trustees and upon the owners on whose behalf such trustees are authorized to act.

XII. If any of the trustees, before the complete execution of the trusts by this Act devolved upon them, should become incapable or unwilling to act, or reside abroad, the vacancies

may, in the case of existing trustees, be supplied in the manner provided by the Act of parliament, deed, or instrument regulating their proceedings; and in the case of elected trustees the vacancies may be supplied by the owners at any meeting convened and held in manner hereinbefore provided with respect to the convening and holding of a meeting of owners for the purpose of consenting to the sale of an advowson; and a certificate of two such justices as aforesaid, and which such justices, on being satisfied of the truth of the facts, are hereby authorized and required to grant, that such vacancies have been supplied, and containing the names, residences, and descriptions of the new trustees, shall be conclusive evidence of the facts, and thereupon such new trustees shall have the same property, rights, and powers in and with respect to the advowson as the trustees in whose place they were appointed.

XIII. Trustees acting by virtue of this Act shall not be answerable or accountable for the acts, neglects, or defaults of any co-trustee, or for any agent or banker appointed by the trustees, or for any loss, except such as shall happen through their own wilful act, negligence, or default.

XIV. In case of the death, cession, or resignation of any incumbent of a benefice after the owners shall have directed the advowson of such benefice to be sold, but before the sale shall have been effected, then the persons in whom the right of presentation and nomination would but for this Act have been vested shall (under and subject to the conditions under which such right would but for this Act have been exercised) present and nominate a person to such benefice as if this Act had not been passed.

XV. The owners of an advowson, at a meeting convened and held in manner hereinbefore provided with respect to the convening and holding of a meeting of owners for the purpose of consenting to the sale of an advowson, may consent to the borrowing of money from "the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy," or from any other society or persons, for the purposes authorized by the Acts of the seventeenth year of King George the Third, chapter fifty-three, the twenty-first year of King George the Third, chapter sixty-six, the seventh year of King George the Fourth, chapter sixty-six, and the first and second years of Queen Victoria, chapter twenty-three, as fully and effectually as any patron absolutely entitled to an advowson not within the provisions of this Act may lawfully do.

XVI. The certificate of two such justices as aforesaid, which they are hereby authorized and required to grant on being satisfied of the truth of the fact, that such consent has been duly given, shall be conclusive evidence of the fact, and such

certificate shall, for all purposes whatever, be deemed the consent of the patron within the meaning of those Acts.

XVII. This act shall extend only to England and Wales.

*Tithes.*] Tithes are defined to be the tenth part of the increase, arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants. 2 *Bl.* 24; 3 *Cr. t.* 22, s. 2. Those arising immediately from the profits of lands, are called Predial tithes; those from the stock upon lands, mixed tithes; and those from the personal industry of the inhabitants, personal tithes. 3 *Cr. t.* 22, s. 6. Tithes are also divided into great and small tithes: the great tithes comprising those of corn, hay and wood, which are predial tithes; the small tithes comprising those of the less valuable matters, such as hops, potatoes, madder, wood (predial tithes), and all mixed and personal tithes (3 *Cr. t.* 22, s. 7),—the distinction, in the case of predial tithes, arising from the nature of the titheable matter, and not from the quantity of it cultivated in the particular parish. *Id.* ss. 8, 9.

Predial tithes are due of common right. *Id.* s. 10. They comprise all kinds of corn; and also beans, peas, &c. when cultivated, whether set, drilled, sown, or planted in rows; but if sown in a garden in like manner they are accounted small tithe. 3 *Cr. t.* 22, ss. 15–17. Hay is a predial tithe, whether made for sale, or consumed upon the farm (*Id.* s. 18); so are clover, saintfoin, rye grass, tares, vetches, &c. (*Id.* s. 20); even a second crop of clover, or the grass of aftermath if cured and made into hay, are titheable (*Id.* ss. 19, 20); but if grass or clover be cut down, and whilst it is in swarth the farmer give it to his plough cattle (*Id.* s. 18); or if tares or vetches be cut green and given as food to milch cows or horses employed in husbandry (*Id.* s. 20), they are not titheable. Underwood (*sylva cadua*) comprising birch, hazel, willow, sallow, alder, maple, whitethorn, and all other trees not accounted timber by the custom of the country, together with fruit trees,—unless employed in repairing the carts and ploughs used in husbandry,—are titheable, as a predial tithe; great wood (comprising oak, ash, elm, beech, and every other tree which is deemed timber by the custom of the country) of the age of twenty years, or of greater age, is not titheable. 45 *Ed.* 3, c. 3. 3 *Cr. t.* 22, ss. 21–30. Hemp and flax are also a predial tithe, but the tithe payment is limited to 5*s.* an acre. 11 & 12 *W.* 3, c. 16, *made perpetual* by 1 *G.* 1, st. 2, c. 26, s. 2. Madder is also titheable. 3 *Cr. t.* 22, s. 3. Hops are a predial tithe, but are deemed a small tithe (*Id.* s. 32); so are potatoes (*Id.* s. 8). Turnips are titheable, when severed, even although sown after corn (*Id.* s. 33); so, an agistment tithe was holden to be due for turnips sown after corn, and not severed, but eaten by unprofitable cattle (*Id.*



s. 41); and now, by stat. 5 & 6 W. 4, c. 75, reciting that "it is frequently convenient and necessary in the agistment of turnips by sheep or cattle, to sever the turnips from the ground, in order that they may be more easily and completely consumed, and thereby to prevent waste, and it is not reasonable that such severance should vary or affect the payment of tithe,"—it is enacted that "in all cases where turnips shall be severed in the manner and for the purpose aforesaid, and shall be eaten on the ground by sheep or cattle, and not otherwise removed, the same shall be subject to the payment of tithe in the same manner and to the same extent as if they had been eaten by such sheep or cattle without having been so severed as aforesaid, and no further or otherwise." Garden plants and herbs, such as cabbage, parsley, &c., and the fruits of trees, are also a predial tithe, but a small tithe (*Id.* s. 34); hot-house plants not (*Id.* s. 35). And lastly, agistment tithe, which is a predial tithe arising from the agistment or pasturage of cattle, is payable of common right by the occupiers of the land, not by the owners of the cattle, and has been decided to be a small tithe (3 *Cr.* t. 22, ss. 36, 40); it is payable, however, only for dry or barren cattle, which yield no profit to the parson (*Id.* s. 37), and not for cattle kept for the plough or pail in the parish, for the parson has tithe of them in another way (*Id.*), nor for horses kept for husbandry, or saddle horses, coach horses, or other horses used merely for pleasure (*Id.* s. 38); nor in respect of meadow land which has paid tithe hay (*Id.* s. 39); but we have seen (*supra*) that it is payable in respect of turnips sown after corn, and not severed, but eaten by unprofitable cattle.

Mixed tithes are those which arise, not immediately from the profit of the land, but from the produce and increase of animals nourished by it. They consist of the tenth of the young cattle,—calves, lambs, pigs, &c.,—bred in the parish, and the time of payment is when the animals are weaned, and can live without their dam (3 *Cr.* t. 22, s. 42); also, the tenth of the wool of sheep and lambs, at the time of clipping (*Id.* s. 43); also the tenth of the milk, and of the cheese where the tithe of milk is not paid in kind (*Id.* s. 44). These, however, are payable, not of common right, but by custom merely; and where they have not been usually paid, they are not demandable (*Id.* s. 10).

As to personal tithes,—it is enacted by stat. 2 & 3 Ed. 6, c. 13, s. 7, that "every person exercising merchandises, bargaining and selling, clothing, handicraft or other art or faculty, being such kind of persons and in such places as heretofore within these forty years have accustomedly used to pay such personal tithes, or of right ought to pay (other than such as are common day labourers), shall yearly at or before the feast of Easter pay for his personal tithes, the tenth part of

his clear gains,—his charges and expenses, according to his estate, condition or degree, to be therein abated, allowed and deducted.” These personal tithes, however, are not payable of common right, but by custom merely; and where they have not been usually paid, they are not demandable; they are scarcely any where paid at present, except for mills, and for fish caught in the sea. *Id.* s. 46, and see 2 & 3 Ed. 6, c. 13, ss. 8, 9, 11.

There are several things, however, which are not titheable, or titheable sub modo only. Quarries of stone or slate, mines of tin, lead, coal, lime, chalk, marl or the like, are not titheable, unless by custom, for they are of the substance of the earth, and not an annual produce. 3 *Cr.* c. 22, s. 47. Houses are not titheable, unless by custom, or (as in the city of London) by Act of Parliament. *Id.* s. 48; and see 2 & 3 Ed. 6, c. 13, s. 12. Forest lands in the hands of the Queen or her lessee, are not titheable; but if disafforested, the land is titheable. *Id.* s. 49. By stat. 2 & 3 Ed. 6, c. 13, s. 5, all barren heath and waste ground, which is improved and converted into arable or meadow, shall not pay tithes for seven years after such improvement. *Id.* s. 50; see *Warwick v. Collins*, 5 M. & S. 166. And lastly, for animals *feræ naturæ*, such as deer, rabbits, &c., tithe is not due at common law; but by the custom of many places, some animals of this kind are titheable. 3 *Cr.* t. 22, s. 51.

*To whom payable.*] The tithes of common right belong to the rector of the parish, who is either the actual incumbent, or the appropriator of the benefice. 2 *Bl.* 26–28. Where there is an actual incumbent, he is entitled to the whole of the tithes, great and small. Where there is an appropriator, a vicar is appointed to perform the spiritual duties of the parish, and to him are assigned a certain portion of the tithes (usually the small tithes only) as is specified in the endowment of the vicarage, the appropriator being entitled to the rest, namely the great tithes;—and which tithes are hence distinguished by the names of Rectorial and Vicarial tithes. Benefices might, and may still, be appropriated to some spiritual corporation, sole or aggregate (being the patron of the living),—by the Queen’s licence, and the consent of the bishop of the diocese; and in this manner the religious houses formerly became appropriators of a great number of livings. These, upon the dissolution of the monasteries in the reign of Henry the Eighth, came into the hands of the king, and by him were granted to lay persons; which is the origin of the present lay appropriations. 1 *Bl.* 384–388; 3 *Cr.* t. 22, ss. 52–58, 62–67.

There remain to be noticed certain owners of tithes called portionists. Formerly every person in a diocese might pay

his tithes to what parson he pleased within it, or he might pay it to the bishop to be distributed by him amongst his clergy. The custom thus originated has not been wholly eradicated, but in some instances (though very rare), there are portions of tithes in one parish which belong to the parson of another parish, and which latter parson is thence called a portionist. 3 *Cr. t.* 22, ss. 59, 92-98. 2 *Bl.* 26, 27.

In those places which are not within a parish, as in forests and the like, the Queen is entitled to the tithes. 3 *Cr. t.* 22, s. 60. And the lord of a manor may be entitled to the tithes of the manor, by prescription. 3 *Cr. t.* 22, s. 61.

*Exemptions.]* Lands and their occupiers may be exempted, wholly or in part, from the payment of tithes, either by composition real,—or by prescription *de modo decimando*,—or by prescription *de non decimando*,—or by Act of Parliament.

1. By composition real. A composition real is an agreement between the owner of lands, and the parson or vicar, with the consent of the ordinary and the patron, that such lands shall thereafter be discharged from the payment of tithes, in consideration of certain land or other real recompense given by the owner to the parson in lieu and in satisfaction thereof. 2 *Bl.* 28; 3 *Cr. t.* 22, s. 71; and see 2 & 3 *Ed.* 6, c. 13, s. 4. This was a good discharge of the lands from tithes for ever, according to the terms of the agreement; and such compositions continued to be made until the 13th year of the reign of Queen Elizabeth, when parsons and vicars were prevented from making any conveyances of the estates of their churches, other than for three lives or twenty one years. 13 *Eliz.* c. 10. Notwithstanding this statute, however, there have been several decrees of courts of equity confirming such compositions made since the statute, with the consent of the ordinary and patron, but they were not deemed binding on succeeding incumbents (3 *Cr. t.* 22, s. 72), until by a late statute, 2 & 3 *W.* 4, c. 100, s. 2, it was enacted that “every composition for tithes, which hath been made or confirmed by the decree of any court of equity in England, in a suit to which the ordinary, patron and incumbent were parties, and which hath not since been set aside, abandoned or departed from, shall be, and the same is hereby confirmed and made valid in law.” And by the same statute (sect. 1), all claims to any exemption or discharge of tithes by composition real or otherwise (where the render of tithes in kind should thereafter be demanded on the part of the king, or the Duke of Cornwall, or any lay person, not being a corporation sole, or any body corporate of many whether temporal or spiritual), shall be sustained and be deemed good and valid in law, upon evidence showing the enjoyment of the land, without payment or render of tithes, money, or other matter in

lieu thereof, for the full period of *thirty* years next before the time of such demand,—unless the render or payment of tithes, or of money or other matter in lieu thereof, shall be shown to have taken place at some time prior to such thirty years, or it shall be proved that such enjoyment was had by some consent or agreement expressly given or made for that purpose by some deed or writing; And if proof in support of the claim be extended to the full period of *sixty* years next before the time of such demand, in such case the claim shall be deemed absolute and indefeasible, unless it be proved that such enjoyment was had by some consent or agreement expressly given or made for that purpose by deed or writing:—And the same, where the demand of tithes in kind shall be made by any archbishop, bishop, dean, prebendary, parson, vicar, master of hospital, or other corporation sole, whether spiritual or temporal, upon proof of such enjoyment as aforesaid had during the whole time that two persons in succession shall have held the office or benefice in respect of which the tithes are claimed, and three years after the appointment of a third; or if that time be less than 60 years, then for and during 60 years. But by sect. 2, no exemption shall be deemed to be within this Act, unless it be proved to have existed and been acted upon at the time of, or within one year next before, the passing of the Act, namely, the 9th August, 1832.

2. By prescription *de modo decimandi*. The regular mode of rendering the tithe to the parson or vicar is, to render it in kind. But a mode of tithing (*modus decimandi*, or *modus*, as it is usually called) might be, and may still be agreed upon between the parson and the tithe payer; and before the statute of the 13 Eliz. c. 10, above alluded to, it might, with the consent of the patron and ordinary, be made in perpetuity, to bind the successors of the parson. And if it could be proved that from time immemorial a particular mode of tithing was used between the parson of any parish and a tithe-payer in it, the law presumed a grant or deed by which such *modus* was established; and such immemorial custom was deemed a good defence for the tithe-payer, if the parson at any time insisted on the ordinary payment in kind. 3 Cr. t. 22, ss. 75, 76. But by stat. 2 & 3 W. 4, c. 100, s. 1, all prescriptions and claims of or for any *modus decimandi* (where the render of tithes in kind should thereafter be demanded on the part of the king, or the Duke of Cornwall, or any lay person not being a corporation sole, or any body corporate of many whether temporal or spiritual), shall be sustained and be deemed good and valid in law, upon evidence showing the payment or render of such *modus* for the full period of *thirty* years next before the time of such demand,—unless the actual payment or render of tithes in kind, or of money or other thing differing in amount, quality or quantity from the *modus*

claimed, shall be shown to have taken place at some time prior to such thirty years, or it shall be proved that such payment or render of modus was made by some consent or agreement expressly given or made for that purpose by some deed or writing; and if proof in support of the claim be extended to the full period of sixty years next before the time of such demand, in such case the claim shall be deemed absolute and indefeasible, unless it be proved that such payment or render of modus was made by some consent or agreement expressly given or made for that purpose by deed in writing:—And the same, where the demand of tithes in kind shall be made by any archbishop, bishop, dean, prebendary, parson, vicar, master of hospital or other corporation sole whether spiritual or temporal, upon proof of such payment or render of modus as aforesaid made during the whole time that two persons in succession shall have held the office or benefice in respect of which the tithes are claimed, and three years after the appointment of a third; or if that time be less than sixty years, then for and during sixty years. But by sect. 2, no modus shall be deemed to be within this Act, unless it be proved to have existed and been acted upon at the time of, or within one year next before, the passing of the Act, namely, the 9th August, 1832.

To render a modus valid, however, the following rules must be observed (2 Bl. 29, 30):—1. It must be certain and invariable.—2. The thing given in lieu of tithes must be beneficial to the parson, and not for the emolument of a third person only; thus a modus to repair the church in lieu of tithes is not good, because that is an advantage to the parish only; but to repair the chancel is a good modus, for that is an advantage to the parson.—3. It must be something different from the thing compounded for; one load of hay instead of all tithe hay, is not a good modus; for no parson would, *bonâ fide*, make a composition to receive less than his due in the same species of tithe, and therefore the law will not suppose it possible for such composition to have existed.—4. One cannot be discharged from payment of one species of tithe, by paying a modus for another; thus a modus of a 1*d.* for every milch cow, will discharge the tithe of milch kine, but not of barren cattle, for tithe is due for both.—5. The recompense must be in its nature as durable as the tithes discharged by it, that is, an inheritance certain: and therefore a modus that every inhabitant of a house shall pay 4*d.* a year in lieu of the owner's tithes, is not a good modus; for possibly the house may not be inhabited, and then the recompense will be lost.—6. The modus must not be too large, which is called a rank modus; as if the real value of the tithes be 60*l.* a year, and a modus of 40*l.* is set up, this will not be established, although one of 40*s.* might: for

as the agreement for the *modus* is supposed to have taken place before the time of legal memory (which is reckoned from the beginning of the reign of Richard the First), it is impossible that the tithes could have been worth so much at that time; so that the very nature of the claim would refute it.

3. By prescription *de non decimando*. This exemption is either personal, or annexed to the land.

The Queen, by her prerogative, pays no tithe. A vicar pays no tithe to the rector, nor the rector to the vicar. But these personal privileges, not arising from or being annexed to the land, are personally confined to the Queen and the clergy; for when their land is in the occupation of a tenant or lessee, such tenant or lessee shall pay tithes for it. 2 *Bl.* 31; 3 *Cr. t.* 22, ss. 77–80.

In some instances the land itself is exempt from tithe,—which arose in this way. Spiritual persons or corporations, as monasteries, abbots, bishops and the like, were capable of having their lands discharged of tithes, by various ways:—1. By real composition;—2. By the Pope's bull of exemption;—3. By unity of possession; as where the rectory of a parish, and lands in the same parish, both belonged to a religious house, those lands were discharged of payment of tithes by this unity;—4. By prescription, having never been liable to tithes, by the lands being always in spiritual hands;—5. By virtue of their order, as the Knights Templars, Cistercians and others, whose lands were privileged by the Pope with a discharge of tithes. And when the greater abbeys were dissolved in the reign of Henry the Eighth, it was enacted by the statute (31 Hen. 8, c. 13) that all persons who should come to the possession of the lands of any abbey then dissolved, should hold them free and discharged of tithes, in as large and ample a manner as the abbeys themselves formerly held them. So that if a man can now show that his lands belonged to one of the abbeys then dissolved, *and* that they were then discharged of tithes by any of the means above mentioned, it will be a good prescription *de non decimando*. 2 *Bl.* 31, 32; 3 *Cr. t.* 22, ss. 81–84. It must be observed, however, that this extends only to lands belonging to the greater abbeys; the lesser monasteries, namely, those not having lands of the clear yearly value of 200*l.*, were previously dissolved by stat. 27 Hen. 8, c. 28, which does not contain the clause above mentioned. But independently of this, by the statute we have already noticed (2 & 3 Will. 4, c. 100, s. 1), extending to all “exemptions from or discharge of tithes by composition real *or otherwise*,” all the occupier of lands in these cases has to do, is, to show the enjoyment of his land “without payment or render of tithes, money, or other matter in lieu thereof,” for the period mentioned in the section, adversely and under a claim of right acquiesced in by the titheowner

(*Salkeld v. Johnson*, 2 Exch. R. 289, 256) and he will be entitled to his exemption *primâ facie*, as fully as if he had given all the proofs above mentioned, formerly required.

4. By Act of parliament. Lands may be, and now frequently are, exempted from payment of tithe, by Act of parliament. For instance, in many of our modern Inclosure Acts, the lands inclosed are for ever freed and discharged from the payment of all tithe; and in lieu of it, a portion of the land is allotted to the spiritual or lay rector, or to the vicar, and to their successors. In some Acts of this kind, a corn-rent is substituted in the place of tithes. 3 Cr. t. 22, s. 85.

In the stat. 2 & 3 Will. 4, c. 100, s. 1, already noticed, a *modus* or exemption for thirty years therein mentioned, will be a good answer to any demand made for the tithe in kind. But where lands or tenements shall be held or occupied by any rector, vicar, or other person entitled to the tithes thereof, or by any lessee of any such rector, vicar, or other person, or by any person compounding for tithes with any such rector, vicar or other person, or by any tenant of any such rector, vicar, or other person, or of any such lessee or compounder, whereby the right to the tithes of such lands or tenements may have been or may be during any time in the occupier thereof, or in the person entitled to the rent thereof, the whole of every such time or times shall be excluded in the computation of the several periods of time hereinbefore mentioned. 2 & 3 Will. 4, c. 100, s. 5. Also, the time during which any person, otherwise capable of resisting any claim to any of the matters before mentioned, shall have been or shall be an infant, idiot, non compos mentis, feme covert or lay tenant for life,—or during which any action or suit shall have been pending, and which shall have been diligently prosecuted until abated by the death of any party or parties thereto,—shall be excluded in the computation of the periods hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible. 2 & 3 Will. 4, c. 100, s. 6. As to the mode of pleading the statute, see sect. 7. The Act however shall not extend or be applicable to any case, where the tithes of any lands, tenements or hereditaments shall have been demised by deed for any term of life or number of years,—or where any composition for tithes shall have been made by deed or writing by the person or body corporate entitled to such tithes, with the owner or occupier of the land, for any such term or number of years,—and such demise or composition shall be subsisting at the time of the passing of this Act, and, where any action or suit shall be instituted for the recovery or enforcing the payment of tithes in kind, within three years next after the expiration, surrender or other determination of such demise or composition. *Id.* s. 4.

*What estates may be had in them.*] The rector or vicar has an estate in the tithes for life, unless he resign the living or vicarage, or be promoted to a bishoprick. But lay impropriators may be tenants in fee simple, fee tail, for life or years (3 Cr. t. 22, s. 67); husbands may be tenants by the curtesy, and widows endowed of them (*id.*); they are accounted assets for the payment of debts, and have all other incidents to temporal inheritances. *Id.* An estate in tithes may be held in joint tenancy, coparcenary or in common; and a partition of any of these may be obtained by a bill in equity. *Id.* ss. 67, 68.

*How aliened.*] A rector or vicar cannot alien his tithes; all he can do is to resign his benefice or vicarage, and allow another to be presented and instituted. But he may lease his tithes during his incumbency, or for twenty-one years or three lives if the patron and ordinary consent to it.

Lay impropriators may alienate their estate in tithes, in the same manner as other real estates; and tithes are comprehended within the statute of uses, under the word "hereditaments." 3 Cr. t. 22, s. 69. But no good title can be made to tithes by a lay impropriator, without showing the letters patent by which the tithes, or the rectory or parsonage to which they are affixed, were granted by the crown to some lay person, that being the only mode of excluding the supposition of a claim *jura ecclesiæ*. The letters patent should also be inspected, to see that no reversion remains in the crown. *Id.*

The regular mode of conveying an estate in tithes, as in all other incorporeal hereditaments, is by deed of grant. But it may be conveyed by lease and release, or bargain and sale. They might formerly be made the subject of a fine, or recovery; and at present may be made the subject of the deed which has been substituted for them. Tithes may be also leased, provided the lease be by deed. They may also be devised. A judgment also is a lien upon tithes, in the same manner as it is upon lands. The deed of grant may readily be framed from the form of a grant of a next presentation to a living; and a lease of tithes may readily be framed from the form of lease;—the tithes in both cases being described as "all those the great or rectorial tithes or tenths of and belonging to the said rectory of C. in the county of D., and issuing, growing, and arising from and out of the lands and hereditaments in the said parish;" and being referred to as "the tithes and hereditaments hereinafter [*or hereinbefore*] described," &c.

*How commuted.*] By stat. 6 & 7 W. 4, c. 71, commissioners were appointed for the commutation of tithes in Eng-



land and Wales. By that Act a meeting of the landowners and titheowners in any parish may be called, and they may proceed to make and execute an agreement for the payment of an annual sum by way of rentcharge, instead of the great and small tithes of the parish; which agreement, after being communicated to the bishop of the diocese, shall be confirmed by the commissioners; and the amount agreed upon shall then be apportioned amongst the tithe-payers, by valuers appointed for the purpose: after which, the lands shall be fully discharged of tithes, and the rentcharge, if not paid, may be levied by distress. Several alterations in this Act, and additions to it, have been made by subsequent statutes, namely, by 1 Vict. c. 69,—1 & 2 Vict. c. 64,—2 & 3 Vict. c. 62,—9 & 10 Vict. c. 73,—and 10 & 11 Vict. c. 104,—14 & 15 Vict. c. 25, s. 4,—14 & 15 Vict. c. 53,—and 16 & 17 Vict. c. 124, to which the reader is referred.

*How set out.*] No person shall carry away his corn, hay, or other produce of which predial tithe is payable, before he hath “justly divided or set forth for the tithe thereof the tenth part of the same;” and it shall be lawful for the parson or other person to whom the tithe is payable, “to view and see their said tithes to be justly and truly set forth and severed from the nine parts, and the same quietly to take and carry away.” 2 & 3 Ed. 6, c. 13, ss. 1, 2; *vide infra*. And the tithe must be so set out, that the titheowner may be enabled to ascertain whether his just proportion is allotted to him, and he must have a reasonable time allowed to him for that purpose. *Thompson v. Bearblock*, 1 B. & Ad. 812. And for this purpose also, the parishioner must leave his nine parts in the field a reasonable time, for the titheowner to compare the tithe with them. *Halliwell v. Trappes*, 2 Taunt. 55; 2 New Rep. 173.

Corn is tithed in the sheaf, and before it is made into shocks or riders. *Id. Shallcross v. Jowle*, 13 East, 261. *Walker v. Ridgway*, 3 Bing. 317. Hay is titheable in the grass cock, after having been tedded in the course of the process of making it into hay (*Newman v. Morgan*, 10 East, 5); it is not titheable in the swath. *Moyes v. Willett*, 3 Esp. 31. But of clover hay, the farmer may set out the tithe in the swath. *Collyer v. House*, 2 Anst. 481; 3 *id.* 954. *Baker v. Athill*, 2 Anst. 491. Potatoes are titheable, when dug up and laid in heaps. *Bearblock v. Hancock*, 2 Car. & P. 425. Turnips, we have seen, when eaten off by stock, are an agistment tithe; but when severed for the sake of removal, they are titheable when put into heaps, or by setting out every tenth turnip, if by so tithing the titheowner has an opportunity of seeing that the tithe is fairly set out. *Clarke v. Clarke*, 2 You. & C. 245. Peas, when grown in fields and

gathered green, may be tithed in sacks containing a certain quantity, the titheowner having his choice out of every ten sacks. *Fanshawe v. Brittain*, 2 You. & J. 575. Hops are titheable after they are gathered from the bind (*Knight v. Halsey* (in error), 8 Bro. P. C. 233; 2 B. & P. 172, 206; 7 T. R. 86); and the tithe is set out by the tenth measure, after they are picked and before they are dried. *Tyers v. Walton*, 7 Bro. P. C. 18. Hemp and flax are titheable at 5s. per acre. 11 & 12 W. 3, c. 16. As to the tithe of vegetables &c. grown in a garden, for the use of a family, it is not easy, or indeed practicable, to apply to them the usual rules of tithing; it therefore requires a mutual spirit of accommodation, on the part of the vicar and the occupier, to adjust the value of the tithe; a sum of money is usually paid. *Fanshawe v. Brittain*, supra.

As to mixed tithes:—the right to the tithe of calves and lambs accrues when they are dropped, but they are not titheable until they are weaned (*Welch v. Upphill*, 1 Brod. & B. 84; *Bearblock v. Tyler*, Jacob Rep. 561); and therefore where the occupier removed lambs out of the parish immediately after they were dropped, it was holden that he was liable to pay for their value, when fit to be weaned. *Fanshawe v. Brittain*, supra. And the tenth calf in the order of birth, is the tithe calf, where the order of birth can be ascertained. *Tratman & Carrington*, 1 Cr. & J. 320. *Carrington v. Cornock*, 4 Sim. 217.

Tithe of wool is due at shearing time, and it is a satisfaction for pasturage during the past year. — *v. Gold*, Ambler, 149.

As to milk, the incumbent is entitled to the milk of the tenth day, morning and evening, and not merely to the milk of the tenth meal (*Fanshawe v. Brittain*, supra; *Cullimore v. Bosworth*, 7 Bro. P. C. 57); and it is titheable in vessels at the common milking place. *Carthew v. Edwards*, Ambler, 72.

As to personal tithes:—the tithe of a mill is the tenth part of the clear profits arising from the grinding of the corn therein, over and above all incidental charges; and the corn ground therein, is to be tithed by the tenth toll dish. *Chamberlain v. Newte*, 7 Bro. P. C. 3. But a miller, who only grinds his own corn, and sells the flour, is not liable to tithes for his mill. *Browne v. Woollsley*, 2 Sim. 305. *Austin v. Elphinston*, 1 You. 597.

But in all these cases if any particular mode of tithing be agreed upon by the titheowner and the tithe-payer, that will be deemed the lawful and due manner of tithing. *Facey v. Hurdon*, 3 B. & C. 213.

If when the tithe of corn, hay, &c., is set out, the titheowner after notice do not take it away, he is liable to an action on

the case, or the tithe-payer may distrain the tithes damage feasant; but the action must be case, not trespass; and the tithe-payer will not be justified in turning in his cattle on the land, whilst the tithe is there. 1 *Arch. N. P.* 406.

*How sued for and recovered.]* For tithes great and small not exceeding 10*l.*, and for the like tithes due from Quakers not exceeding 50*l.*, if not paid within twenty days after demand, a summary proceeding before two justices of the peace (neither of them being patron of the church, or interested in the tithes) is given by stat. 7 & 8 W. 3, c. 6; 7 & 8 W. 3, c. 34; 53 G. 3, c. 127, and the same may be levied by distress. See 2 *Arch. J. P.* 548, where the whole of the proceeding is detailed. And this is the only mode of proceeding for tithes of these amounts, where the title to the tithes, or the title of the defendant to exemption, is not *bond fide* in question. 5 & 6 W. 4, c. 74, s. 1; 4 & 5 Vict. c. 36. But in cases not within these statutes, the following remedies are given.

As to the remedy at law:—By stat. 2 & 3 Edw. 6, c. 13, s. 1, “every of the King’s subjects shall from henceforth truly and justly, without fraud or guile, divide, set out, yield and pay all manner of their predial tithes in their proper kind, as they rise and happen, in such manner and form as hath been of right yielded and paid for forty years next before the making of this Act, or of right or custom ought to have been paid; and that no person shall from henceforth take, or carry away any such or like tithes, which have been yielded or paid within the said forty years, or of right ought to have been paid, in the place or places titheable of the same, before he hath justly divided or set forth for the tithe thereof the tenth part of the same, or otherwise agreed for the same tithes with the parson, vicar, or other owner, proprietary or fermor of the same tithes,—under the pain of forfeiture of treble value of the tithes so taken or carried away.” This treble value, in all cases where the single value cannot be recovered in a summary way before two justices, as above mentioned (5 & 6 W. 4, c. 74, s. 1), is recovered in an action of debt. Under the general issue, *nil debet*, the plaintiff must prove the whole of his case; and under the same plea, the defendant may not only disprove any part of the plaintiff’s case, but may give in evidence any matter of exemption,—a composition real, a modus, a prescription *de non decimando* (which however may be specially pleaded), or an exemption by statute. The verdict and judgment is for the treble value; and if the single value do not exceed twenty nobles (6*l.* 13*s.* 4*d.*) the plaintiff shall be entitled to his costs by stat. 8 & 9 W. 3, c. 11, s. 3. See 5 & 6 W. 4, c. 74, s. 1, *supra*.

As to the remedy in the ecclesiastical courts:—By stat. 2 & 3 Edw. 6, c. 13, s. 2, “Whensoever and as often as the said

predial tithes shall be due, and at the tithing of the same, it shall be lawful to every party to whom any of the said tithes ought to be paid, or his deputy or servant, to view and see their said tithes to be justly and truly set forth and severed from the nine parts, and the same quietly to take and carry away; and if any person carry away his corn or hay, or his other predial tithes, before the tithe thereof be set forth,—or willingly withdraw his tithes of the same or of such other things whereof predial tithes ought to be paid,—or do stop or let the parson, vicar, proprietor, owner, or other their deputies or farmers, to view, take and carry away their tithes as is above said,—by reason whereof the said tithe or tenth is lost, impaired or hurt: that then, upon proof thereof made before the spiritual judge, or any other judge to whom heretofore he might have made complaint, the party so carrying away, withdrawing, letting or stopping, shall pay the double value of the tenth or tithe so taken, lost, withdrawn or carried away over and besides the costs, charges and expenses of the suit in the same,—the same to be recovered before the ecclesiastical judge, according to the King's ecclesiastical laws." As to the proceedings thereon, see sect. 13; and as to prohibitions, preventing the court from proceeding, see sects. 14, 15. The ecclesiastical courts, however, have no jurisdiction, where a *modus* is pleaded (*Darby v. Cosens*, 1 T. R. 552. *French v. Trask*, 10 East, 348; 15 East, 574); or in cases where the tithe can be recovered in a summary way, before two justices, as above mentioned. 4 & 5 Vict. c. 36.

As to the remedy in a court of equity:—a very usual remedy for tithes, where any dispute arises as to the amount, or the liability of the party, is by bill in equity for an account and for a discovery; whereupon the court will decree the single value, with costs. See *Com. Dig.* tit. *Dismes*, M. 13, &c. But here also, the court has no jurisdiction in cases where the tithe can be recovered in a summary way before justices of the peace, as already mentioned. 5 & 6 W. 4, c. 74, s. 1, *supra*.

*Rights and privileges.*] The incumbent is entitled to the whole of the tithes, great and small, and the other ecclesiastical dues of the parish; the vicar has usually only the small tithes, and the impropriator the great tithes, but this may vary according to the nature of the endowment. The incumbent has also the freehold, for his life, in the parsonage house and the glebe, and the freehold of the church is in him. The incumbent, vicar, and curate are exempt from serving the office of overseer of the poor; and exempt from serving as jurors (6 G. 4, c. 50, s. 2); exempt from toll or turnpike roads, when going to or returning from visiting any sick parishioner, or on other his parochial duty within his parish

(3 G. 4, c. 126, s. 32); and exempt from arrest, whilst performing divine service, or whilst going to perform or returning from performing it. 9 G. 4, c. 31, s. 23. And the incumbent or vicar, or even a perpetual curate, has the right of presiding as chairman at all meetings of the parish vestry. 4 *Burn, Ecc. L.* 9.

*Their duties.*] No minister shall refuse or delay to christen any child, according to the form of the book of common prayer, that is brought to the church to him upon Sundays or holidays to be christened, convenient warning being given him thereof before; and if he shall refuse to do so, he shall be suspended by the bishop of the diocese from his ministry for the space of three months. *Can.* 68. And the godfathers and godmothers, the people with the children, shall be ready at the font, either immediately after the last lesson at morning prayer, or else immediately after the last lesson at evening prayer, as the curate shall appoint. *Rubr.*; 1 *Burn, Ecc. L.* 109.

Refusal by a clergyman to marry a couple, where there is no impediment to the marriage, is punishable as an ecclesiastical offence. It is also thought to be a common law offence, punishable upon indictment; but if it be so, it has been holden that the indictment in such a case must allege that the man and woman presented themselves, together, to the clergyman, at a time and place where he could be legally called upon to perform the ceremony, and demanded to be married by him. *R. v. Moorhouse, James*, 19 Law J. 179, *m.*

As to burials,—every parishioner has a right to be buried in the churchyard of his parish, and without payment of any fee for breaking the soil (1 *Burn, Ecc. L.* 258), unless such fee be due by prescription or immemorial custom. *Andrews v. Cawthorne*, Willes, 536; and see *Spry v. Gallop*, 16 Mees. & W. 716. But it seems that there is no such right in respect to the burial of a person who was not a parishioner, without the consent of the parishioners or churchwardens, and perhaps of the incumbent whose soil is broken. 1 *Burn, Ecc. L.* 258. And no minister shall refuse or delay to bury any corpse that is brought to the church or churchyard (convenient warning being given him thereof before), in such manner and form as is prescribed in the book of common prayer; and if he refuse so to do (except the party deceased were denounced excommunicated *ex majori excommunicatione* for some grievous and notorious crime, and no man able to testify of his repentance),—he shall be suspended by the bishop of the diocese from his ministry for the space of three months. *Can.* 68. Also persons who die unbaptized, or who have laid violent hands upon themselves, are not to have the burial service performed over them. *Rubr.* But baptism by a dissenting minister (*Kemp*

v. *Wickes*, 1 Burn, Ecc. L. 265, n.), or private baptism, is deemed sufficient; and unless the deceased have been found *felo-de-se* by a coroner's inquest, he is not within the other branch of this exception. 1 Burn, Ecc. L. 266. But even persons who are found *felo-de-se* by coroner's inquest, instead of being buried in the public highway, as formerly, are now to be buried in the churchyard or other burial ground of the parish or place in which by law or custom they might be interred (4 G. 4, c. 52, s. 1); but the burial service is not to be read over them. *Id.* s. 2.

As to the burial of the bodies of paupers,—it is provided by the 7 & 8 Vict. c. 101, s. 31, that unless the guardians in compliance with the desire expressed by the pauper in his lifetime, or by any of his relations, or for any other cause, direct the body to be buried in the churchyard or burial ground of the parish to which the pauper was chargeable (which they are authorized by this Act to do), every dead body which the guardians, or any of their officers duly authorized, shall direct to be buried at the expense of the poor rates shall (unless the deceased person, or the husband or wife, or next of kin, have otherwise desired) be buried in the churchyard, or other consecrated burial ground, in or belonging to the parish, division of parish, chapelry, or place in which the death may have occurred.

For the purpose of burial, the workhouse of the union and district school are constructively situated in the parish to which the poor person was chargeable, s. 56.

In all cases of burial under the direction of the guardians or overseers, the fee or fees payable by the custom of the place in which the burial may take place, or under the provisions of any Act of Parliament, shall be paid out of the poor rates for the burial of each such body to the person or persons who by such custom or under such Act may be entitled to receive any fee, s. 31.

As to contribution from union funds for the enlargement of any churchyard or consecrated burial ground, or towards the obtaining of any such consecrated public burial ground, and the right of the guardians to bury the bodies of paupers therein, see 13 & 14 Vict. c. 101, s. 2.

As to the keeping of the registers of baptism, marriage, and burial, see stat. 52 G. 3, c. 146; and as to the punishment for making false entries in them, see 1 W. 4, c. 66, s. 20.

See also the Acts for the registration of births, deaths, and marriages, and the regulations issued by the registrar general, under the authority of those Acts.

As to the authority of the officiating clergyman of the parish to visit the workhouse, see stat. 30 G. 3, c. 49 (and the 4 & 5 W. 4, c. 76, s. 43). 3 Arch. J. P. 303, 8th Ed.

## COLLECTOR OF HIGHWAY RATE.

*How appointed, 38.*  
*Security, 38.*

*Their duties, 38.*

*How appointed.]* The surveyor of any parish [township, &c.] by consent of the majority of the inhabitants in vestry, may appoint any number of collectors of the highway rate: and may remove any such collector and appoint another in his stead, and make such allowance to such collector out of the highway rates, as the inhabitants in vestry shall think reasonable. 5 & 6 W. 4, c. 50, s. 36.

*Security.]* The surveyor is required to take security from every collector so appointed, for the due execution of his office of collector, to the full amount of the sum likely to be in the hands of the collector at any one time, and the security shall be by bond without stamp. *Id.* s. 37.

*Their duties.]* It is their duty to collect, receive, and enforce payment of the highway rate. And they shall have the same powers, remedies, and privileges for levying and enforcing the payment of such rate, as the surveyor appointed under the Highway Act (5 & 6 W. 4, c. 50, s. 36); that is to say, the same powers, remedies, and privileges as the overseers of the poor in the parish have by law for the recovery of any rate made to the relief of the poor. *Id.* s. 34. See *Morrell v. Martin*, 11 Law J. 22, m. *Charinton v. Johnson*, 14 Law J. 299, m. As to the mode of proceeding for the non-payment of highway rate, see stat. 12 & 13 Vict. c. 14. And see 1 *Arch. J. P.* 582; 3 *Arch. J. P.* 268, 8th Ed.

They must also account for the money received by them. By stat. 5 & 6 W. 4, c. 50, s. 38, every such collector appointed by virtue of this Act, shall, under his hand, and at such time and in such manner as the surveyor may direct, deliver to the said surveyor as aforesaid true and perfect accounts in writing of all monies which shall have been by such collector received by virtue of this Act, and also a list of the names of all such persons as shall have neglected or refused to pay their respective rates, and of the monies due from them respectively; and that every such collector shall pay all such monies as shall remain due from him to the said surveyor as aforesaid;—and if any such collector shall refuse or neglect to make and render such account, or to produce and deliver up the list of persons neglecting and refusing to pay their rates as aforesaid, or to make payments as aforesaid, or shall refuse or wilfully neglect to deliver to the said surveyor as aforesaid, or to such person as he shall appoint to receive the same, within three days after being thereunto required by the said surveyor

as aforesaid, by notice in writing under his hand given to or left at the usual place of abode of such collector, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said surveyor as aforesaid respecting the same, then and in every such case, upon complaint made by the said surveyor as aforesaid of any such refusal or wilful neglect as aforesaid to any justice of the peace, such justice may and he is hereby authorized and required to issue a summons under his hand for the collector so refusing or neglecting, to appear before any two justices of the peace; and upon the said collector appearing, or having been so summoned and not appearing, without some sufficient or reasonable excuse, or not being found, it shall be lawful for the said two justices to hear and determine the matter;—and if upon confession of the party, or by the testimony of any credible witness on oath, it shall appear to such justices that any monies remain due from such collector, such justices may and they are hereby authorized and required, upon non-payment thereof, by warrant under their hands to cause such money to be levied by distress and sale of the goods and chattels of such collector; and if no goods and chattels of such collector shall be found sufficient to answer and satisfy the said money, and the charges of distraining and selling the said goods and chattels, then and in every such case such justices shall and they are hereby required to commit such offender to the common gaol or house of correction for the county, city, or place where such offender shall be or reside, there to be kept to hard labour for a period not exceeding six calendar months, or until he shall have paid such monies as aforesaid or compounded with the surveyor as aforesaid for such money (which composition the said surveyor, with the consent of the inhabitants in vestry, or, in any parish where they do not meet in vestry, with the consent of the inhabitants contributing to the highway rate, at a public meeting assembled, is hereby empowered to make and receive);—or if it shall appear to such justices that such collector had refused or wilfully neglected to render and give such accounts, or to produce and deliver the list of persons neglecting and refusing to pay their rates as aforesaid, or that any books, papers, or writings relating to the execution of this Act remained in the hands or in the custody or power of such collector, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case such collector shall, on conviction thereof, forfeit for such offence any sum not exceeding twenty pounds, and in default of payment thereof shall be committed to the common gaol or house of correction for the county, city, or place where such offender shall be or reside, there to be kept to hard labour for a period not exceeding four calendar months, or until he shall have



given a true and perfect account as aforesaid, and delivered such list as aforesaid, and delivered up such books, papers, and writings, or give satisfaction in respect thereof to the said surveyor:—Provided always, that no conviction or imprisonment of such collector as aforesaid shall exonerate or discharge any security taken from him on his appointment as aforesaid. 5 & 6 W. 4, c. 50, s. 38.

### COLLECTOR OF POOR RATE.

#### 1. *In parishes not in Union.*

In parishes not in union it is the duty of the overseers to collect the poor rate; they cannot employ a collector for the purpose, and pay him out of the parish funds. *R. v. Gwyer and Manley*, 4 Nev. & M. 158. But the inhabitants of any parish, in vestry assembled [or of any township, village, or place having separate overseers of the poor, and maintaining their poor separately, in a meeting of the inhabitants thereof, holden after due and legal notice, s. 35], may nominate and elect an assistant overseer (59 G. 3, c. 12, s. 7); and among the duties assigned to him, upon his appointment, may be and usually is, the duty of collecting the poor rate; and the vestry may require him to give security for the faithful execution of the office. See *post*, tit. "*Assistant Overseer*."

#### 2. *In parishes in Union.*

*His appointment*, 40.

*Queries to be answered before appointment by guardians*, 42.

*His qualification*, 43.

*His duties*, 43.

*His accounts*, 44.

*Salary*, 47.

*Security*, 47.

*Continuance in office, &c.*, 48.

*His appointment.*] In parishes in unions, also, the vestry, in appointing an assistant overseer, may assign to him the collecting of the poor rate, if the poor law commissioners do not interfere, and order the guardians of the union to appoint a separate officer for that purpose. By stat. 2 & 3 Vict. c. 84, s. 2, the commissioners have authority to make such orders;—they have the same powers and authorities with respect to all such orders, and to the persons appointed in pursuance thereof, as they have with respect to orders made and issued, and the paid officers appointed, under the provisions of stat. 4 & 5 W. 4, c. 76; and every person appointed by guardians of the poor under any such order of the said commissioners, shall have the like powers, authority, privileges, immunities, protections, and remedies, in and for the performance of his duty under such order, as are by law given to overseers of the

poor in performance of the like duty. 2 & 3 Vict. c. 84, s. 2. See *post*, tit. "*Paid Officer*."

And if the board of guardians of any parish or union make application to the said commissioners, to direct the appointment of a paid collector of the poor rates in such parish or union, or in any parish or parishes of such union, it shall be lawful for the said commissioners, by order under their hands and seal, to direct the said board of guardians to appoint such a collector; and the said commissioners shall have the same powers with respect to such collectors as are given to them by stat. 4 & 5 W. 4, c. 76, with respect to paid officers; and all powers of the inhabitants of any parish in vestry assembled, or of justices of the peace, or of any persons, other than the board of guardians of such parish or union, to appoint any collector for any such parish as aforesaid, and (except when otherwise directed by the said commissioners) all appointments under such powers, shall cease. 7 & 8 Vict. c. 101, s. 62. See *R. v. Greene et al.*, 21 Law J. 137, *m.* But by sect. 61, reciting that it was expedient that such collectors should in certain cases be invested with other of the duties of overseers of the poor, it was enacted that the inhabitants in vestry assembled of any parish situated within the district for which any collector or assistant overseer appointed under any order of the said commissioners now acts, may appoint such collector or assistant overseer to discharge all the duties of an overseer of the poor, in addition to those of collector of poor rates for such parish, and in the same manner as if he were appointed thereto as an assistant overseer under the provisions of stat. 59 G. 3, c. 12; and wherever any such collector or assistant overseer has been or may be appointed under any order of the said commissioners, and whilst the said order remains in force, the powers of any vestry or parish officers, or of any other persons, other than the board of guardians of such parish or union (if a board of guardians have been constituted), to appoint any collector or assistant overseer, and (if so directed by the said commissioners) every appointment under such powers shall cease: provided always, that where the appointment of such assistant overseer shall have been made under the powers of any local Act of parliament of a parish containing more than twenty thousand persons, such appointment shall continue, and the powers of such local Act, as to any future appointment of an assistant overseer, shall be exercised, but subject always to the powers of the poor law commissioners, notwithstanding the provisions of this Act: provided always, that no overseer shall be discharged by the appointment of any such collector or assistant overseer from his responsibility for the provision and supply of monies necessary for the relief of the poor, or for any of the purposes to which the rates made for the relief of the poor may be by law

applicable; and every collector appointed or to be hereafter appointed as aforesaid, and every assistant overseer appointed or hereafter to be appointed, in pursuance of stat. 59 G. 3, c. 12, or of the orders of the said commissioners, shall, subject to the rules of the poor law commissioners, obey in all matters relating to the duties of overseer, all directions of the majority of the overseers of the parish for which he acts; and the said commissioners shall have the same powers with respect to all collectors or assistant overseers as are given to them by stat. 4 & 5 W. 4, c. 76, with respect to paid officers; and every collector or assistant overseer appointed as aforesaid shall be bound to give to the board of guardians of the parish or union, or if there be no such board of guardians then to the overseers of the parish for which such collector or assistant overseer may act, sufficient security for the due performance of his duties; and no bond or any other security entered into in pursuance of this Act or of the said Act of the fifty-ninth year of the reign of King George the Third, shall be charged or chargeable with, or be deemed to be or to have been subject or liable to, any stamp duty whatsoever; and wherever any parish for which such collector or assistant overseer may be appointed is situated in an union, or is governed by a board of guardians, every bond or security given by any officer, in pursuance of this Act, or of the said Act of stat. 53 G. 3, c. 12, or 4 & 5 W. 4, c. 76, and not contrary to the rules of the said commissioners, shall, if the guardians shall see fit, be put in suit by the board of guardians of the union in which the parish or district for which the officer acts or has acted may be situated, notwithstanding that such bond or security may have been originally given to the overseers of a parish, or to any other persons; and every bond or security given by or on account of any officer appointed by any board of guardians, for the due performance of the office to which he is so appointed, shall remain in full force and effect, notwithstanding any change in district for which such officer may have been appointed or required to act at the time when such bond or security was given, or the addition of any parish to or the separation of any parish from such union since the giving of such security. 7 & 8 Vict. c. 101, s. 61.

*Queries to be answered before appointment by Guardians.]*

Before the appointment of a collector of poor rates is sanctioned by the Poor Law Board, satisfactory answers must be given by the person appointed to the following queries:—

1. State the Christian name and surname of the person appointed as collector, in full.—2. His present place of residence.—3. His age.—4. The name of the parish or parishes for which he is appointed collector.—5. His previous occupations, professions, or callings; state whether he has been

in the army, navy, excise, police, or other public service, and if so, which service; the cause of his leaving the same; and the date when he left.—6. State whether he has before held any office in any union or parish; and, if so, what office, and in what union or parish; the cause of his leaving the same; and the date when he left.—7. State whether he continues in any other occupation, profession, or calling; or continues to hold any other paid or parochial office; and, if so, state what.—8. State whether he has ever been bankrupt or insolvent; and, if so, when; if bankrupt, whether he has obtained his certificate.—9. Whether he has a competent knowledge of accounts.—10. The amount of salary, or the nature and amount of remuneration proposed.—11. The nature and amount of security; also the names and addresses of the sureties.—12. State whether the guardians are satisfied that the person appointed is competent to fulfil the office of collector, and to perform efficiently the duties required of him.—13. State the cause of the vacancy on account of which the appointment is made; if a resignation, state the cause of such resignation, and the name of the former collector.—14. State the authority which the appointment is made under; also the date when the appointment was made; and the date from which the officer's duties commence.

—— *Signature of the Clerk.*

—— *Signature of the Officer appointed.*

[The Christian name and surname being written in full.]

Reported to the Poor Law Board for their approval, —— day of ——, 185—.

*His qualification.*] The order of the poor law board, usually issued upon such occasions, directs that no person shall be qualified to be a collector unless upon his appointment he undertake to give one month's notice previous to resigning the office, or to forfeit one month's amount of salary, to be deducted as liquidated damages from the amount of salary due at the time of such resignation.

*His duties.*] By the same order the duties of such collector are :—

1. To assist the churchwardens and overseers in making, assessing, and levying the poor rates of the said parish.
2. To collect the poor rates from the parties assessed thereto in the said parish.
3. To assist the said churchwardens and overseers in filling up receipts, keeping all books, and making all returns which relate to any matter concerning the poor rates of the said parish.

4. At all times, when required by such churchwardens and overseers, to produce to them the rate books and other account books in his custody relating to the said parish, and to balance the said rates, and to furnish the said churchwardens and overseers of the poor with a true list of all defaulters in the payment of poor rates due to such parish, and under their direction to institute and attend to proceedings against such defaulters.
5. To attend the meetings of the guardians of the said union when required by them, and to obey all lawful orders and directions of such guardians, and of the majority of the said overseers of the poor.
6. To perform all the duties prescribed by the poor law commissioners in their general order, dated the seventeenth day of March, one thousand eight hundred and forty-seven, so far as the same relate to the office of collector, and all rules, orders, and regulations to be hereafter issued by them applicable to his office.

*His accounts.]* With regard to the duty of the collectors in keeping their accounts, it is provided by the general accounts order of the poor law commissioners, dated the 17th March, 1847, as follows :—

*Art. 5.* Every collector already appointed or to be hereafter appointed by any board of guardians or other persons, under any order of the poor law commissioners, or under the provisions of any Act of Parliament, shall enter up so much of any books or forms of the overseers relating to the collection of the poor rate, or the relief of the poor herein prescribed, as he may be directed to enter up by the overseers for the time being, and shall enter in the rate book all such particulars of every assessment as he is directed by such overseers to enter therein ; and every such collector shall attend before the auditor at the same time as the overseers of the parish for which he acts :

Provided that the signature of any such collector to any book presented to the auditor shall not be taken to stand for or supply the place of the signature of any overseer which may be otherwise required by this our order.

*Art. 6.* Every such collector shall in all cases fill up and use, as is hereinbefore directed in the case of overseers of parishes in which there are more than thirty rate-payers on the rate book, a *rate receipt check book*, in the form hereinbefore prescribed ; and when he shall receive the amount due for poor rate on behalf of any parish or its officers, he shall, at the time of receiving the same, and not before, give to the person paying such money a proper receipt, as directed in this order in the case of overseers, and shall insert in such receipt the true date of the receipt.

**Art. 7.** It shall be the duty of every collector, before he shall proceed to collect any rate, to prepare receipts in the aforesaid form, numbered both on the receipt and the note thereof with the same number consecutively throughout the book, and properly to fill in the same respectively with the names of the several rate-payers, and the sum to be collected from each; and to submit such receipt check book, so numbered and filled up, to the overseers of the parish for which such rate is to be collected, before he proceeds to collect the rate; and such overseers shall cause the correctness of the numbering, and the correspondence of the sums, and of the names filled in, with the rate book to which they relate, to be ascertained; and on the leaf next after the last of the receipts so made out in respect of any one rate, the said overseers shall certify the fact that such receipt check book has been examined and ascertained to be correct, and shall state in words at length the number of receipts filled up for the rate then to be collected. If upon the closing of any rate there shall remain in the rate receipt check book any receipts made out for such rate unused, the collector to whom such book shall belong shall enter upon each of such receipts the reason of its not having been used, and date and sign such entry.

**Art. 9.** Every such collector shall keep a book to be called the *collecting and deposit book*, in which shall be entered accurately, and under their true dates, all sums received and paid over by him as such collector, and also the number of every receipt given by him out of the said rate receipt check book.

**Art. 10.** The collector shall attend any of the ordinary meetings of the board of guardians, if thereunto required by them.

**Art. 12.** In every case in which there shall be more than one collector employed in the collection of any one rate, the provisions hereinbefore made shall apply to the portion of such rate assigned to each collector as if such portion were one entire rate.

By a further order of the poor law board, dated the 16th March, 1854, after rescinding all such parts of the before-mentioned order which shall be inconsistent or at variance with anything contained in such order (of 16th March, 1854), the board ordered and directed as follows:

**Art. 1.** The several columns of the rate book which contain the rateable value, and the rate in the pound assessed upon the several persons liable to be assessed, shall be added up at the foot of every page, and the general total shall be ascertained and set forth at the foot of the rate, before the same shall be submitted to the justices for their allowance.

**Art. 2.** If the overseers shall deem it convenient, the rate may be divided into several portions corresponding with the

4. At all times, when required by such churchwardens and overseers, to produce to them the rate books and other account books in his custody relating to the said parish, and to balance the said rates, and to furnish the said churchwardens and overseers of the poor with a true list of all defaulters in the payment of poor rates due to such parish, and under their direction to institute and attend to proceedings against such defaulters.
5. To attend the meetings of the guardians of the said union when required by them, and to obey all lawful orders and directions of such guardians, and of the majority of the said overseers of the poor.
6. To perform all the duties prescribed by the poor law commissioners in their general order, dated the seventeenth day of March, one thousand eight hundred and forty-seven, so far as the same relate to the office of collector, and all rules, orders, and regulations to be hereafter issued by them applicable to his office.

*His accounts.]* With regard to the duty of the collectors in keeping their accounts, it is provided by the general accounts order of the poor law commissioners, dated the 17th March, 1847, as follows :—

*Art. 5.* Every collector already appointed or to be hereafter appointed by any board of guardians or other persons, under any order of the poor law commissioners, or under the provisions of any Act of Parliament, shall enter up so much of any books or forms of the overseers relating to the collection of the poor rate, or the relief of the poor herein prescribed, as he may be directed to enter up by the overseers for the time being, and shall enter in the rate book all such particulars of every assessment as he is directed by such overseers to enter therein ; and every such collector shall attend before the auditor at the same time as the overseers of the parish for which he acts :

Provided that the signature of any such collector to any book presented to the auditor shall not be taken to stand for or supply the place of the signature of any overseer which may be otherwise required by this our order.

*Art. 6.* Every such collector shall in all cases fill up and use, as is hereinbefore directed in the case of overseers of parishes in which there are more than thirty rate-payers on the rate book, a *rate receipt check book*, in the form hereinbefore prescribed ; and when he shall receive the amount due for poor rate on behalf of any parish or its officers, he shall, at the time of receiving the same, and not before, give to the person paying such money a proper receipt, as directed in this order in the case of overseers, and shall insert in such receipt the true date of the receipt.

*Art. 7.* It shall be the duty of every collector, before he shall proceed to collect any rate, to prepare receipts in the aforesaid form, numbered both on the receipt and the note thereof with the same number consecutively throughout the book, and properly to fill in the same respectively with the names of the several rate-payers, and the sum to be collected from each; and to submit such receipt check book, so numbered and filled up, to the overseers of the parish for which such rate is to be collected, before he proceeds to collect the rate; and such overseers shall cause the correctness of the numbering, and the correspondence of the sums, and of the names filled in, with the rate book to which they relate, to be ascertained; and on the leaf next after the last of the receipts so made out in respect of any one rate, the said overseers shall certify the fact that such receipt check book has been examined and ascertained to be correct, and shall state in words at length the number of receipts filled up for the rate then to be collected. If upon the closing of any rate there shall remain in the rate receipt check book any receipts made out for such rate unused, the collector to whom such book shall belong shall enter upon each of such receipts the reason of its not having been used, and date and sign such entry.

*Art. 9.* Every such collector shall keep a book to be called the *collecting and deposit book*, in which shall be entered accurately, and under their true dates, all sums received and paid over by him as such collector, and also the number of every receipt given by him out of the said rate receipt check book.

*Art. 10.* The collector shall attend any of the ordinary meetings of the board of guardians, if thereunto required by them.

*Art. 12.* In every case in which there shall be more than one collector employed in the collection of any one rate, the provisions hereinbefore made shall apply to the portion of such rate assigned to each collector as if such portion were one entire rate.

By a further order of the poor law board, dated the 16th March, 1854, after rescinding all such parts of the before-mentioned order which shall be inconsistent or at variance with anything contained in such order (of 16th March, 1854), the board ordered and directed as follows:

*Art. 1.* The several columns of the rate book which contain the rateable value, and the rate in the pound assessed upon the several persons liable to be assessed, shall be added up at the foot of every page, and the general total shall be ascertained and set forth at the foot of the rate, before the same shall be submitted to the justices for their allowance.

*Art. 2.* If the overseers shall deem it convenient, the rate may be divided into several portions corresponding with the



several divisions of their parish, so as to bring all the rateable property of each division together, and there may be separate series of numbers for the assessments in every division.

*Art. 3.* When the owners of property are assessed instead of the occupiers, the overseers may, if they think proper, bring together and assess under one number all or any portion of the properties situated in the parish, or in the separate division, where the parish is divided into divisions, belonging to the same persons, and for which he shall be liable to be assessed as owner.

*Art. 4.* When any overseer or collector shall receive the whole amount due for poor rate from any person assessed, he shall at that time, and not before, detach the receipt applicable to such person's assessment from the check book, and deliver the same, stamped with an adhesive stamp, where the amount of the payment shall render such stamp necessary, to the person paying the same, and retain the note in the book.

He shall insert in the receipt and in the note thereof so retained the true date of the payment of the money.

When the rate shall be paid by instalments, the fact of every payment shall be noted on the back of the receipt and on the note thereof, and the receipt shall not be given to the person paying the rate until the whole amount of the rate shall have been received, but an acknowledgment of the amount received shall be given in writing upon the demand note, or ticket, or otherwise, as the collector or overseer shall find convenient.

*Art. 5.* The form of the rate receipt check book shall be according to the form set forth in the schedule to the order.

*Art. 6.* The collector shall every week pay over all moneys collected by him, or in his hands, belonging to the parish, to the banker whom the overseers may direct, to be placed to the account of one or more of them; or, if directed by one of the overseers, to the treasurer of the guardians of the union, in payment of any order from such guardians then due; or, in the absence of any such direction, shall pay the same to one of the said overseers in person; provided that as often as at any time in the course of any week the sum or sums of money in the hands of such collector belonging to the parish shall together exceed fifty pounds, he shall forthwith pay over such sum or sums in the manner hereinbefore directed.

*Art. 7.* The collector shall balance the collecting and deposit book monthly, at the times provided in the following article.

*Art. 8.* The collector shall keep a book containing blank forms of monthly statements, and shall every month fill up one of such statements with the several particulars set forth in the said form, which statement shall be made up to the

last day of every calendar month inclusive ; excepting in the case of the month of March, when it shall be made up to the 25th, and in that of the month of September, when it shall be made up to the 29th ; so that any receipts or payments on the remaining days of those months respectively shall be included in the next monthly statement ; and he shall forthwith deliver a copy of such statement, signed by himself, to one or more of the overseers and another to the board of guardians at their next ordinary meeting.

Provided that the board of guardians or the overseers of the parish may, if they think fit, require a statement containing the several particulars set forth in the said form, to be made out and delivered to them respectively every week or fortnight ; and the clerk to the guardians shall preserve the copies forwarded to the board of guardians, and shall produce the same to the auditor at the next audit.

*Art. 9.* The collector shall at each audit produce to the auditor an unpaid rates statement showing the name of every person rated to the relief of the poor in respect of whom there shall be, at the end of the half year for which the audit is being held, any arrear of the rate made immediately before that in the course of collection at that time, with the other particulars according to the form set forth in the schedule to the order.

*His salary.]* The order also provides that the board of guardians shall pay to the officer appointed to the office under this order, a salary at and after the rate of £—— per annum, and shall charge the same to the said parish.

The salary of such officer shall be payable up to the day on which he ceases to hold such office, and no longer, and shall be paid by equal periodical payments in like manner as the salaries of the other paid officers of the union are paid, with a proportionate sum to be paid to his executors or administrators in case he shall die while holding such office.

No collector who may be suspended, and who shall, upon such suspension, resign, or be removed by the poor law board, shall be entitled to any salary from the date of such suspension ; and no such officer who shall be temporarily suspended from his office by reason of his services not being required, shall be entitled to any salary pending such temporary suspension.

*Security.]* That every person appointed to such office shall give a bond in such penal sum as the said guardians shall think fit, in the names of himself and two sufficient sureties, not being officers of the said union, conditioned for the due and faithful performance of the duties of the office ; and every such officer shall give immediate notice to the said guardians

of the death, insolvency, or bankruptcy of either of such sureties, and shall, when required by the said guardians, produce a certificate, signed by two householders, that his sureties are alive and believed by them to be solvent, and shall supply a fresh surety in the place of any such surety who may die, or become bankrupt or insolvent. Provided that the guardians may, if they think fit, take the security of any society or company expressly authorized by statute to guarantee or secure the faithful discharge of the duties of any poor law officer.

*Continuance in office, &c.]* And that every officer appointed under this order shall continue to hold the said office until he shall die, or resign, or be removed by the poor law board, or be proved to be insane by evidence which such board shall deem satisfactory; and upon such death, resignation, removal, or insanity of any such officer, the said guardians shall give notice thereof to the poor law board, and proceed to appoint some person in his place, according to the provisions of this order.

The said guardians may, at their discretion, suspend from the discharge of his duties any such collector, and shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to the poor law board, for the decision of the poor law board thereon; and in every case of resignation the said guardians shall transmit to the poor law board a statement of the cause of such resignation, so far as it may be known to them.

If any officer appointed under this order be at any time prevented by sickness or accident, or other sufficient reason, from the performance of his duties, the guardians may appoint a fit person to act as his temporary substitute, and may pay such person a reasonable compensation for his services; and every such appointment, with a statement of the circumstances which have led to it, shall be reported to the poor law board as soon as the same shall have been made.

As to their accounting, &c., and their punishment for embezzlement, or for not obeying the orders of justices and guardians, &c., see *post*, tit. "*Paid Officer.*"

## CONSTABLES.

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### 1. PETTY CONSTABLES.

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#### 1. *Who may be.*

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*Who qualified.*] Every able-bodied man resident within the parish, between the ages of twenty-five years and fifty-five years, rated to the relief of the poor, or to the county rate, on any tenements of the net yearly value of four pounds or upwards (except such persons as shall be exempt or disqualified as hereinafter mentioned), shall be qualified and liable to serve as constable of that parish. 5 & 6 Vict. c. 109, s. 5.

*Who exempted.*] All peers ;—all members returned to serve in the commons house of parliament ;—all judges of Her Majesty's courts of record at Westminster ;—all justices of the

peace ;—all deputy lieutenants ;—all clergymen in holy orders ;—all priests of the roman catholic faith who shall have duly taken and subscribed the oaths and declarations required by law ;—all persons who shall teach or preach in any congregation of protestant dissenters, whose place of meeting is duly registered, and who shall follow no secular occupation, except that of a schoolmaster, producing a certificate of some justice of the peace of their having taken the oaths and subscribed the declaration required by law ;—all schoolmasters ;—all serjeants and barristers at law actually practising ;—all members of the society of doctors at law and advocates of the civil law actually practising ;—all attorneys, solicitors, and proctors duly admitted in any court of law or equity, or of ecclesiastical or admiralty jurisdiction, in which attorneys, solicitors, and proctors have usually been admitted, actually practising, and having duly taken out their annual certificates ;—all conveyancers and special pleaders below the bar ;—all officers of any such courts actually exercising the duties of their respective offices, —all coroners, gaolers, and keepers of houses of correction ;—all members and licentiates of the royal college of physicians in London, actually practising ;—all surgeons, being members of one of the royal colleges of surgeons in London, Edinburgh, or Dublin, and actually practising ; all apothecaries, having obtained a certificate to practise as an apothecary from the master, wardens, and society of apothecaries of the city of London, and actually practising ;—all officers in Her Majesty's navy or army on full pay ;—all persons enrolled and serving in any corps of yeomanry under officers having commissions from Her Majesty, or lieutenants of counties, or others specially authorized by Her Majesty for that purpose ;—all pilots licensed by the Trinity-house of Deptford, Stroud, Kingston-upon-Hull, or Newcastle-upon-Tyne, and all masters of vessels in the buoy and light service employed by either of those corporations ;—and all pilots licensed by the lord-warden of the cinque ports, or under any Act of parliament or charter for the regulation of pilots in any other port ;—all the household servants of Her Majesty ;—all officers of customs and excise ;—all sheriffs and sheriffs' officers ;—all high constables ;—the clerks of the boards of guardians of the poor ;—the masters of all union workhouses ;—all county or district constables ;—all parish clerks ;—all registrars and superintendent registrars of births, deaths, and marriages ;—all churchwardens, overseers, and relieving officers ;—[and all post-masters and persons employed in the business of the post office, 13 & 14 Vict. c. 20, s. 5.]—shall be freed and exempt from serving the office of constable under this Act. 5 & 6 Vict. c. 109, s. 6.

*Who disqualified.]* All licensed victuallers and persons licensed to deal in any exciseable liquors or to sell beer by

retail,—all gamekeepers,—and all persons who have been attainted of any treason or felony, or convicted of any infamous crime,—shall be disqualified from serving the office of constable under this Act. 5 & 6 Vict. c. 109, s. 7.

## 2. *How chosen and sworn into Office.*

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Formerly constables were usually appointed at the court leet, or, in default thereof, by justices of the peace ; sometimes otherwise by statute or custom. But now by stat. 5 & 6 Vict. c. 109, s. 21, no petty constable, headborough, borsholder, tithingman, or peace officer of the like description under any name of office, shall be appointed for any parish, township or vill within the limits of the Act, except for the performance of duties unconnected with the preservation of the peace or with the execution of the Act, at any court leet or torn, or otherwise than under the provisions of the Act, or under the provisions of stat. 2 & 3 Vict. c. 93 (*post*, p. 67), or of some Act passed for the amendment thereof. But nothing herein contained shall be taken to prevent the appointment of special constables,—or to apply to the city of London or the metropolitan police district,—or to any borough which is within the provisions of the Municipal Corporation Act, 5 & 6 W. 4, c. 76, or of any charter granted in pursuance of that Act, or of any Act made for the amendment thereof,—or to any parish, town, or place in which rates are or shall be levied for the payment of constables, under the provisions of stat. 3 & 4 W. 4, c. 90, or of any local Act specially applying to such parish, town, or place ; and that nothing hereinbefore contained shall be taken to apply to the county palatine of Chester. 5 & 6 Vict. c. 109, s. 21. And when a parish is partly within, partly without such exempted place, only those residing within the exempted part of the parish shall be exempt from serving as constables under the above Act. 7 & 8 Vict. c. 52, s. 4. Also, by stat. 2 & 3 Vict. c. 93, s. 25, upon the appointment of constables for a county, the power to appoint and pay, and to make rates for paying any constables in any hundred, parish, township, or place within such

county, except boroughs incorporated under the provisions of stat. 5 & 6 W. 4, c. 76, other than high constables, or other than special constables; provided however that nothing herein contained shall prevent the appointment of parochial constables.

*Special sessions.]* On some day after the twenty-fourth of March and before the ninth of April in each year, the justices of the peace of every county in England [and of every liberty in England having a separate commission of the peace, and not being an incorporated borough, 7 & 8 Vict. c. 52, s. 1,] shall hold a special petty session of the peace in their several divisions for the appointment of parochial constables, of which session due notice shall be given [by the clerk to the justices, 13 & 14 Vict. c. 20, s. 4] to every justice usually acting in that division. 5 & 6 Vict. c. 109, s. 1.

*Precepts to the overseers.]* The justices shall, within the first seven days of February in each year, issue a precept under the hands of any two of them, to the overseers of each parish, [township, &c.] within the division, requiring them to make out and return, before the twenty-fourth of March in each year, a list in writing of a competent number of men within their respective parishes, &c., qualified and liable to serve as constables, and also to perform all other requisitions in the said precepts contained; and with the said precept shall be given notice to the said overseers of the time and place where such special session of the peace as aforesaid will be holden. 5 & 6 Vict. c. 109, s. 2.

*Lists by vestry.]* The overseers of every parish, [township, &c.] upon the receipt of such precept, shall summon a meeting of the inhabitants in vestry, to be holden within fourteen days after the receipt of the said precept; and the vestry at such meeting shall make out a list in writing of such number as shall be named in the precept of men residing within their parish, &c., who shall be qualified and liable to serve as constables, with the Christian name and surname, and with the true place of abode, the title, quality, calling or business of each, written at full length: but the vestry may annex to the return the names of any number of men willing to serve the office of constable, and whom the vestry will recommend to be appointed, although not having the qualification hereinafter mentioned. 5 & 6 Vict. c. 109, s. 3.

In parishes in which the Vestries Act (13 & 14 Vict. c. 57) is in force, the lists of constables are to be made out and published by the vestry clerk of the parish (s. 7).

*Union of parishes for the purpose.]* It shall be lawful

for the justices at a special petty session of the peace to be holden for that purpose, at any convenient time before the issuing of such precept as aforesaid (of which last-mentioned session due notice shall be given to every justice usually acting within the division), to make an order for uniting any parish or parishes, [townships, &c.] whenever they shall think it expedient, to any parish [*or* township, &c.] adjoining thereto, or for the annexing of any extra-parochial places to any parish adjoining thereto, for the purposes of this Act; and a copy of such order shall be served on the overseers of every parish, &c., so united, and also on the overseers of such adjoining parish, &c., and every such extra-parochial place so annexed, with the precept hereinbefore mentioned; and every such parish or extra-parochial place so united to any adjoining parish shall thenceforward be deemed, for all the purposes of this Act, to be a part of such adjoining parish, &c.; and the inhabitants thereof shall be entitled to attend and vote at any meeting in vestry for the purposes of this Act of the inhabitants of the parish, &c., to which such parish [*or* township] is united, as fully as if they were inhabitants of the parish, &c., where such meeting is holden. 5 & 6 Vict. c. 109, s. 4.

*Overseers to return the lists.]* The overseers of each parish, &c., shall make out true copies of the lists agreed to in vestry; and where any of the persons named in the list shall have been chosen to serve, and shall have served, the office of constable in the said parish, in person or by substitute, the overseers are to set against his name in the list the date of the year of such service, and shall on the first three Sundays in the month of March in each year, fix a true copy of such list upon the principal door of every church, chapel, and other public place of religious worship within their parish, having first subjoined to every such copy a notice, stating that all objections to the list will be heard by the justices of the peace at the time and place mentioned in such notice, and having also signed their names at the foot of such copy;—and shall likewise keep the original list, or a true copy thereof, to be perused by any of the inhabitants of their parish, &c., at any reasonable time during the first three weeks of the month of March in each year, without any fee or reward;—and on or before the day limited for making their return shall sign and return the original list to the justices as required by the precept, under a penalty of five pounds. 5 & 6 Vict. c. 109, ss. 8, 9.

And the overseers of each parish, &c., shall attend the special session of the peace to be holden for the appointment of constables in their parish, &c., and shall then and there verify the list so returned by them, and shall answer on oath such questions touching the same as shall be put to them, or



any of them, by the justices then present ; and if any man not qualified and liable to serve as constable as aforesaid is inserted in any such list, the justices, upon being satisfied by the oath of the party complaining, or upon other proof, or upon their own knowledge, that he is not qualified and liable to serve as constable, may strike his name out of such list ; and also strike thereout the names of men disabled by lunacy or imbecility of mind, or by deafness, blindness, or other infirmity of body, from serving as constable ; and when every such list shall be duly corrected at such session, or at such adjournment thereof, it shall be allowed by the justices present, or two of them at such session, or such adjournment, who shall sign the same, with their allowance thereof. 5 & 6 Vict. c. 109, s. 10.

*Appointment.]* And when any list shall have been allowed, the justices shall choose from the allowed list the names of such number of persons as they shall deem necessary (having regard to the extent and population of the parish, &c.), to act as constables within the parish, &c. during the year then next following, and until other constables shall be chosen and sworn to act in their stead as constables for such parish, &c. : provided always that where any person shall have been chosen to serve, and shall have served, the office of constable, either in person or by substitute, as hereinafter provided, he shall not be liable to be again chosen until every other person in the parish liable and qualified to serve shall have also served the office of constable, either in person or by substitute. 5 & 6 Vict. c. 109, s. 11.

*Swearing in.]* The justices shall cause the persons so chosen to be summoned to appear before them on a day to be fixed by such justices, and shall cause to be administered to every such person the following oath ; (that is to say,)

*I, A. B., of C., do swear, that I will well and truly serve our sovereign Lady the Queen in the office of constable for the parish of D. [or parishes of D. E., &c.,] for the year now next following, or until another constable shall be sworn in my stead, according to the best of my skill and knowledge. So help me God.* 5 & 6 Vict. c. 109, s. 12.

*Substitutes.]* But if any qualified person chosen as aforesaid, shall be unwilling to serve the office of constable in person, and shall find a substitute, to be approved by the justices, and willing to serve for him, the person so chosen and unwilling to serve shall attend with his proposed substitute at the time and place appointed for swearing in constables ; and the justices, if they shall approve of such proposed substitute,

shall cause the oath to be administered to him, instead of the person so chosen and unwilling to serve; but the service of any person as substitute for another person, shall not be reckoned as his own service, so as to exempt him from being sooner chosen to serve in his own person than otherwise he would have been liable to. 5 & 6 Vict. c. 109, s. 12. This section does not in terms require any particular qualification in the substitute so proposed and sworn. See *Re Booth*, 18 Law J. 25, m.

*Lists of those appointed.]* Within fourteen days after the appointment and swearing of such constables, the clerk to the justices shall send to every justice usually acting within the division,—and also to the clerk of the peace, for the purpose of being laid before the next court of general or quarter sessions;—a list containing the names of all constables so appointed in the division, and the parishes, &c. for which they have been appointed; and the overseers of the poor shall affix to the door of their respective parish churches a list of the names of the constables appointed in their respective parishes, &c. 5 & 6 Vict. c. 109, s. 14.

*Refusing to serve.]* Every person qualified and liable to serve, and who shall be chosen by the justices to serve, the office of constable, and shall be duly summoned to be sworn, and to take upon him the said office, and who shall refuse, or (without reasonable cause, to be allowed by the said justices,) neglect to attend and to be sworn as constable, or to find a qualified substitute to be sworn in his stead,—shall, upon conviction, forfeit and pay any sum not more than ten pounds; and every person who, after being sworn as constable, shall refuse or wilfully neglect to act in the execution of his office, shall, upon conviction, forfeit and pay for every such offence any sum not more than five pounds. 5 & 6 Vict. c. 109, s. 13.

*Vacancy by death, refusal to serve, &c.]* In case of the death, disqualification, [or discharge, 13 & 14 Vict. c. 20, s. 1,] of any constable during his year of office, of which the overseers shall forthwith give notice to a justice of the peace usually acting for the division,—or in case any person who shall have been chosen constable shall refuse or neglect as aforesaid to attend and be sworn, or to find a qualified substitute to be sworn in his stead, and shall have been fined for such refusal or neglect,—The person who has last served, and shall not then be disqualified, or exempt, shall be bound to act in his stead until another constable shall be appointed and sworn to act for the remainder of the year, which shall be done at the next petty session of the peace for the division, of which notice shall be given to all the justices usually acting

for the division ; and in case the constable making the vacancy was serving as substitute for some other person, the justices shall summon the person originally chosen to attend and be sworn, or to find another substitute duly qualified to serve for the remainder of the year ; or if the person originally chosen shall be then disqualified, or shall have refused or neglected as aforesaid to attend and be sworn, or to find a substitute, or if the constable making the vacancy was serving after having been chosen, and not as a substitute, the justices at such session shall choose another qualified person, out of the allowed list then in force, to serve the office of constable during the remainder of the year, and shall proceed in all respects as in the original appointment of constable for that year, and the person so chosen shall be bound in like manner, and subject to the same penalty to attend and be sworn, or to find a substitute to be sworn in his stead to serve for the remainder of the year ; and if less than two hundred days shall have elapsed since the first appointment of constables for that year, but not otherwise, the service of the person appointed to act for the remainder of the year shall be reckoned to him as service for that year. 5 & 6 Vict. c. 109, s. 16.

*Paid constables, in what cases and how appointed.]* The vestry assembled for the purpose of making such return as aforesaid, may resolve that one or more paid constables shall be appointed for the parish, &c. ; and if the vestry shall so resolve, a copy of the resolution, and of the amount of salary which the vestry shall resolve on paying to such constable or constables, shall be sent by the overseers to the justices, with the return hereinbefore mentioned. 5 & 6 Vict. c. 109, s. 18.

And the justices upon receiving from any parish a copy of any such resolution, if they shall be satisfied with the amount of salary agreed to be paid, shall appoint so many paid constables to act for the parish, &c., as shall be agreed to by the resolution,—or, if the same resolution shall have been agreed to by more parishes than one adjoining each other, may, if they shall think fit, appoint the same paid constables to act conjointly for all such last-mentioned parishes ; and in every parish in which a paid constable shall be appointed under this Act, the justices, if they shall think fit, need not appoint any unpaid constable, or may appoint a smaller number of unpaid constables than they had otherwise resolved on appointing for that parish ; and every paid constable shall hold his appointment until he shall resign or be dismissed for misconduct by the justices of the division in petty session assembled, or until the vestry shall rescind the resolution for his appointment at any meeting of vestry holden for making such return as aforesaid. 5 & 6 Vict. c. 109, s. 19. And in case of the death, resignation, or dismissal for misconduct of any

paid constable, at any time, the justices of the division, in petty sessions assembled, may forthwith appoint another paid constable from and out of the list of constables allowed by the justices at the special sessions last holden for the appointment of constables, at the same rate of salary as has been agreed by the vestry to be given to paid constables. 13 & 14 Vict. c. 20, s. 3.

The amount of the salary to the paid constable is to be paid by the overseers out of any moneys in their hands collected for the relief of the poor. *Id.* s. 20.

*Superintendents.*] The justices of the peace of any county, in general or quarter sessions assembled, may appoint a superintending constable for each or any petty sessional division within the said county, who shall have all the powers and immunities of a parish constable under stat. 5 & 6 Vict. c. 109, and shall have the superintendence of all the parish constables appointed in such parishes as shall be ordered by such justices, and under such regulations as they shall make, and shall perform such duties as the said justices shall require of him; and whenever the justices, assembled as aforesaid, shall have provided a lock-up house, they shall also appoint a constable to have the charge thereof, who shall also have all the powers and immunities of a parish constable under stat. 5 & 6 Vict. c. 109; and every superintending constable, and constable so appointed to the charge of a lock-up house, shall be entitled to hold his office until dismissed by the justices in general or quarter sessions, and shall receive such salary and allowances out of the county rates as the justices assembled as aforesaid shall order. 13 & 14 Vict. c. 20, s. 6.

### 3. *Lock-up Houses.*

By stat. 5 & 6 Vict. c. 109, s. 22, the justices of the peace of any county in general or quarter sessions assembled, if they shall think fit, may order that lock-up houses for the temporary confinement of persons taken into custody by any constable, and not yet committed for trial, or in execution of any sentence, shall be provided in such places within their county as the said justices shall think fit: and for that purpose they may purchase and hold lands and tenements, or to appropriate to that purpose any lands and tenements belonging to the county which are not needed for the purpose to which they were applied or intended to be applied before such appropriation; or, instead of providing new lock-up houses, they may order that the lock-up houses, strong rooms or cages belonging to any parish be appropriated for the purpose of this Act, and if necessary be enlarged or improved;

and the expense of building, hiring, or otherwise providing, repairing, and furnishing such lock-up houses shall be defrayed out of the county rates : provided always, that notice of the day and hour at which any business relative to providing, enlarging, or improving any such lock-up house will begin at such session, shall be given by the clerk of the peace, with the notice of holding the session, on the requisition of any five justices acting for such county ; and that no such lock-up house shall be built or otherwise provided, enlarged, or improved, except upon such plan as shall be approved by one of Her Majesty's principal secretaries of state : provided also, that every such lock-up house shall be within the inspection of the inspectors of prisons.

Also, provision is made by stat. 11 & 12 Vict. c. 101, for the erecting, hiring, or otherwise providing lock-up houses on the borders of adjoining counties, boroughs, &c., to which persons apprehended by constables, or remanded by justices in each of such counties, &c., may be temporarily confined, previously to their being committed for trial, or in execution of their sentence. And "so far as respects the power to detain therein and remand thereto, and to convey thereto or therefrom, persons taken into custody, every such lock-up house shall be deemed a lock-up house in and for each of the counties and boroughs for the joint use of which the same shall be provided, and all justices, constables, and others shall have authority accordingly." *Id.* s. 5.

#### 4. *Constables' Fees, Allowances, &c.*

*Their ordinary fees, allowances, &c.]* The justices of the county, in general or quarter session assembled, shall, from time to time (subject to the approval of one of Her Majesty's principal secretaries of state), settle tables of fees and allowances to the constables for the service of summons and execution of warrants, and for the performance of such other occasional duties which may be required of the said constables, for which the said justices shall think that fees ought to be allowed ; and whenever any duty, for which any such fee or allowance shall have been settled, and for which the payment is not by law charged upon the county rates, shall have been performed by any constable appointed under this Act, the amount of the fee or allowance shall be paid by the overseers of the parish in respect of which such fee has become payable, out of any moneys in their hands collected for the relief of the poor, upon the order of the justices in petty session assembled for the division, and under such regulations as shall be made from time to time by the justices in general or quarter session assembled, subject to the approval of the secretary of state.

5 & 6 Vict. c. 109, s. 17. This provision has been extended by the 13 & 14 Vict. c. 20, and a fee may now be paid to the constables, for the execution of any order of a justice, made in writing, or for the performance of any occasional duties, the same being sanctioned and allowed by justices in petty sessions assembled. As to paid constables, see *ante*, p. 56.

*Expenses on account of parish.*] By stat. 18 G. 3, c. 19, s. 4, every constable, headborough, or tithingman shall "every three months, and within fourteen days after he shall go out of such office," deliver to the overseers of the poor of his parish, township, or place, an account, fairly entered in a book to be kept for the purpose, and signed by him, of all sums expended by him or received by him on account of such parish; the overseers shall then lay such account before the inhabitants, and if the majority approve of it, the overseers shall pay the amount out of the poor rates; but if the account be not approved of, it shall be given back to the constable, who may then produce the same before any justice of the peace of the county, &c., in which such parish is situate, giving reasonable notice thereof to the overseers, which said justice is hereby authorized to examine the same, and to hear and determine any objections that shall be made to the said accounts, and to settle the sum which to him shall appear due, and to enter the same in the said account, and to sign his name thereto; and the overseers shall then pay such sum out of the poor's rate. Expenses incurred by a constable, in prosecuting for an assault upon himself in the execution of his duty relative to parish business, *R. v. Bird et al.*, 2 B. & A. 522, or in prosecuting a person taken by him in the act of committing an offence in a place of religious worship, having been bound over to prosecute, *S. v. Seville et al.*, 5 B. & A. 180, are not within the meaning of this statute.

### *5. Their Punishment for Offences.*

*Extortion.*] Extortion by a constable is the taking of money by him, by colour of his office, either where none at all is due, or where he takes more than is due, or where it is not yet due. 1 *Hawk.* c. 68, s. 1. See *R. v. Higgins*, 4 Car. & P. 247. It is a misdemeanor at common law, punishable upon indictment with fine, or imprisonment, or both. See 1 *Hawk.* c. 68, s. 5.

*False imprisonment.*] The slightest detention of a party, or restraint of his personal liberty, against his will, is in law an imprisonment; and if this be done without lawful authority, it is technically termed false imprisonment. It is punishable

upon indictment as a misdemeanor at common law, with fine or imprisonment, or both : or the party may have his remedy by action. If therefore a constable take a person into custody, or at all apprehend or arrest him, where by law he has no authority to do so, he is liable to an indictment or action for it, as for a false imprisonment. In what cases a constable is authorized to arrest without warrant, see *post*, p. 96; in what cases with warrant, *post*, p. 104. And it may be necessary to add, that if the warrant be good on the face of it, and be for a matter of which the justice or justices who granted it had jurisdiction, and be executed by the constable within the district for which he may act, he will be fully justified in executing it, and making the arrest under it, although the party be innocent of the offence for which he is arrested, and there be no pretence for charging him with it.

*Neglect of duty or disobeying orders of justices.*] Upon complaint made on oath to two or more justices of the peace, at any special or petty sessions, of any neglect of duty, or disobedience of any lawful warrant or order of a justice of the peace, by any constable, (overseer of the parish, or other peace or parish officer,) such constable having been duly announced to appear and answer the charge, the justices may impose upon conviction any reasonable fine, not exceeding 40s., upon such constable, &c., as a punishment for such disobedience or neglect of duty, to be applied and disposed of for the relief of the poor of the parish, &c., where the offender shall reside ; and by warrant, under their hands and seal, they may direct the same to be levied by distress, or for default of distress, they may commit the offender for a time not exceeding ten days. If the person convicted and fined, or committed, think himself aggrieved thereby, he may appeal to the next general or quarter sessions, giving at least ten days' notice of appeal. 33 Geo. 3, c. 55, s. 1.

*Permitting escape.*] If a constable, having a prisoner in lawful custody, allow him to escape, it is either through negligence or done intentionally ; which latter is technically termed a voluntary escape. A negligent escape is a misdemeanor, and punishable upon indictment with fine or imprisonment, or both. A voluntary escape is punishable in like manner as a misdemeanor, whether the party escaping were guilty or not of the offence imputed to him (2 *Hawk.* c. 19, s. 26) ; but if he be retaken and convicted, then the offence of the constable in allowing him to escape is punishable in the same manner as the offence of which the party was convicted, and is of the same degree, whether treason, felony, or misdemeanor. 2 *Hawk.* c. 19, s. 22. In order, however, to con-

stitute an escape of either kind punishable as above-mentioned, there must have been an actual arrest of the party, justifiable in point of law (2 *Hawk.* c. 19, s. 2), and upon a criminal charge. *Id.* s. 3.

6. *Constables, how Protected.*

*Actions against them.*] If an action be brought against a constable for anything done by him in the execution of his office, the action must be commenced within six calendar months (24 G. 2, c. 44, s. 8. *Parton v. Williams*, 3 B. & A. 330); the venue must be laid in the proper county; the defendant may plead the general issue, and give the special matter in evidence (7 Jac. 1, c. 5; 21 Jac. 1, c. 12); and the defendant if he recover shall have full costs. *Id.* 5 & 6 Vict. c. 97, s. 2. And he shall be deemed to be within this protection, where the act for which the action is brought, was *bond fide* done by him, intending to do his duty. *Gosden v. Elphick*, 19 Law J. 9, *ex.*

Where the act complained of was done by him in obedience to a justice's warrant, a demand of a perusal and copy of the warrant must be made upon him before the action is commenced: if he do not give it within six days, the plaintiff may bring his action against him alone; but if he give it, then the justice must also be made defendant in the action, otherwise the constable, on proof of the warrant at the trial, shall have a verdict; or if the plaintiff make the justice a party, the constable shall still be entitled to a verdict, but the plaintiff, if he recover against the justice, shall also recover against him any costs he may have been obliged to pay to the constable. 34 G. 2, c. 44, s. 6.

*Assaulting them.*] Assaulting a constable, or other peace officer in the due execution of his duty, is punishable upon indictment as a misdemeanor, with imprisonment, with or without hard labour, for not more than two years, and the court may also fine the offender, and require him to find sureties for keeping the peace. 9 G. 4, c. 31, s. 25. The prosecutor will also be entitled to the costs of the prosecution. 7 G. 4, c. 64, s. 23.

*Killing them, or being killed by them.*] If a constable, or any person acting in his aid, be killed in endeavouring to execute a magistrate's warrant,—if the warrant be legal, and the slayer had notice, either expressly or from circumstances, of the deceased being a constable, and of the intent of the arrest, the law in that case implies malice, and the slayer will



be guilty of murder. But if the warrant be bad on the face of it, as being too general, or the like, the killing in such a case will be manslaughter only. So, if a constable, without warrant, apprehend or attempt to apprehend an offender, in a case where by law he may do so, and be killed in so doing, it will be murder; but if it happen in a case where he has no authority by law to apprehend the party, the killing will be manslaughter only. *Arch. New Cr. Law*, 29, 30. And if, to resist or prevent lawful apprehension, a man shoot at or attempt to shoot at the constable attempting to apprehend him, or shall stab, cut, or wound him, it will be a felony, punishable with transportation for life, or for not less than fifteen years, or imprisonment, with or without hard labour, for not more than three years. 1 Vict. c. 85, s. 4.

On the other hand, if a constable, in endeavouring to make a legal arrest, be resisted, and in opposing force to force he happen to kill the party, the homicide is justifiable; and he is not bound to retreat, as in the ordinary case of *se defendendo*: but if the arrest would have been illegal, the killing would amount to manslaughter. So where a party may lawfully be arrested for felony, and he, knowing the cause, flies, so that he cannot be taken otherwise than by killing him, the constable pursuing him will be justified in killing him. But where the arrest is for a misdemeanor only, a constable will not be justified in killing in pursuit; and if in such a case he kill with a deadly weapon, it will be murder; if otherwise, manslaughter; or if he fire at and wound the party, he may be indicted as for a felony under stat. 1 Vict. c. 85. *Arch. New Cr. Law*, 29. See *R. v. Dadson*, 20 Law J. 57, m.

## 2. BOROUGH CONSTABLES.

<i>How appointed and regulated</i> , 62.	<i>Penalty for neglect of duty</i> , 64.
<i>Their duties</i> , 63.	<i>Assaulting them in the execution of their duty</i> , 65.
<i>In what cases they may take bail</i> , 64.	<i>Their wages, expenses, &amp;c.</i> 65.

*How appointed and regulated.*] The Municipal Corporation Act, 5 & 6 W. 4, c. 76, s. 76, after providing for the appointment of a watch committee in each of the boroughs to which that Act relates, enacts that such watch committee shall, within three weeks after their first formation, and so from time to time thereafter as occasion shall require, appoint a sufficient number of fit men, who shall be sworn in before some justice of the peace, having jurisdiction within the borough, to act as constables, for preserving the peace by day and by night, and preventing robberies and other felonies, and apprehending

offenders against the peace. And the watch committee for any borough as aforesaid, may from time to time frame such regulations as they shall deem expedient for preventing neglect or abuse, and for rendering such constables efficient in the discharge of their duties ; and the said committee, or any two justices of the peace having jurisdiction within the borough, may at any time suspend or dismiss any constable whom they shall think negligent in the discharge of his duty, or otherwise unfit for the same ; and when any man shall be so dismissed, or cease to belong to the said constabulary force, all powers vested in him as a constable by virtue of this Act shall immediately cease ; and no man so dismissed as aforesaid shall be re-appointed without the consent of two of the justices of the peace having jurisdiction within the borough. 5 & 6 W. 4, c. 76, s. 77.

*Their duties.*] The men so sworn shall, not only within such borough, but also within the county in which such borough or part thereof shall be situated, and also within every county being within seven miles of any part of such borough, and also within all liberties in any such county, have all such powers and privileges, and be liable to all such duties and responsibilities, as any constable duly appointed now has or hereafter may have within his constablewick by virtue of the common law of this realm, or of any statutes made or to be made (see *post*, p. 94). 5 & 6 W. 4, c. 76, s. 76. And the county police now have the same authority, powers and privileges within every borough within their county, as the borough constables have within the county. 19 & 20 Vict. c. 69, s. 6.

The borough constables shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within such borough, or within any county in which they shall be called on to act as constables, for conducting themselves in the execution of their office. 5 & 6 W. 4, c. 76, s. 76. They are to preserve the peace by day and by night, to prevent robberies and other felonies, and to apprehend offenders against the peace. *Id.* And it shall be lawful for any constable, during the time of his being on duty, to apprehend all idle and disorderly persons whom he shall find disturbing the public peace, or whom he shall have just cause to suspect of intention to commit a felony, and to deliver any person so apprehended into the custody of the constable appointed under this Act, who shall be in attendance at the nearest watch-house, in order that such person may be secured until he can be brought before a justice of the peace, to be dealt with according to law, or may give bail for his appearance before a justice of the

peace, if the constable shall think fit to take bail, in the manner hereinafter mentioned. 5 & 6 W. 4, c. 76, s. 78.

*In what cases they may take bail.]* Where any person charged with any petty misdemeanor shall be brought without the warrant of a justice of the peace, into the custody of any constable appointed under this Act, during his attendance in the night time at any watch-house within any such borough as aforesaid, it shall be lawful for such constable, if he shall think fit, to take bail by recognizance, without any fee or reward, from such person, conditioned that such person shall appear for examination within two days before a justice of the peace within the borough at some time and place to be specified in the recognizance; and every recognizance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if the same had been taken before a justice of the peace;—and the constable shall enter in a book to be kept for that purpose in every watch-house, the names, residence, and occupation of the party, and his surety or sureties, if any, entering into such recognizance, together with the condition thereof, and the sums respectively acknowledged, and shall lay the same before such justice as shall be present at the time and place when and where the party is required to appear;—and if the party does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognizance to be drawn up, to be signed by the constable, and shall return the same to the next general or quarter sessions of the peace for the borough, or for the county in which such borough is situate in those boroughs for which there shall be no separate general or quarter sessions of the peace, with a certificate at the back thereof, signed by such justice, that the party has not complied with the obligation therein contained; and the clerk of the peace shall make the like estreats and schedules of every such recognizance as of recognizances forfeited in the sessions of the peace;—and if the party not appearing shall apply by any person on his behalf to postpone the hearing of the charge against him, and the justice shall think fit to consent thereto, the justice shall be at liberty to enlarge the recognizance to such further time as he shall appoint;—and when the matter shall be heard and determined, either by the dismissal of the complainant, or by binding the party over to answer the matter thereof at the sessions, or otherwise, the recognizance for the appearance of the party before a justice shall be discharged without fee or reward. 5 & 6 W. 4, c. 76, s. 79.

*Penalty for neglect of duty.]* And if any constable of any borough shall be guilty of any neglect of duty, or of any dis-

obedience of any lawful order, every such offender being convicted thereof before any two justices of the peace shall, for every such offence, be liable to be imprisoned for any time not exceeding ten days, or to be fined in any sum not exceeding forty shillings, or to be dismissed from his office, as such justices shall in their discretion think meet. 5 & 6 W. 4, c. 76, s. 80.

*Assaulting them in the execution of their duty.*] If any person shall assault or resist any constable of any borough appointed under this Act in the execution of his duty, or shall aid or incite any person so to assault or resist, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence forfeit and pay such sum not exceeding five pounds as the said justices shall think meet: provided always, that nothing herein contained shall prevent any prosecution by way of indictment against any person so offending, but so as that such person shall not be prosecuted by indictment and also proceeded against under this Act for the same offence. 5 & 6 W. 4, c. 76, s. 81.

*Their wages, expenses, &c.*] The treasurer of every borough appointed under this Act shall pay to the constables of such borough appointed under this Act such salaries, wages, and allowances, and at such periods, as the watch committee for such borough shall (subject to the approbation of the council) direct;—and the council shall order to be paid also any extraordinary expenses which such persons shall appear to have necessarily incurred in apprehending offenders and executing the orders of any justice of the peace having jurisdiction within such borough, such expenses having been first examined and approved by such justice;—and the said treasurer shall also pay such further sums as the watch-committee shall (subject to the approbation of the council) award to any of the persons belonging to the said constabulary force, as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of their duty, or as an allowance to such of them as shall be disabled by bodily injury received, or shall be worn out by length of service,—and all other charges and expenses which the watch committee shall (subject to the approbation of the council) direct to be paid for the purposes of the constabulary force under this Act. 5 & 6 W. 4, c. 76, s. 82. But borough constables are not to receive fees for any act done by them; or if they receive fees where legally payable, they must hand them over to the treasurer of the borough. 19 & 20 Vict. c. 69, s. 8.

Provision is made, by stat. 11 and 12 Vict. c. 14, for establishing in boroughs a superannuation fund for the police.

## 3. COUNTY CONSTABLES.

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<i>Appointment of the petty constables, 70.</i>	<i>Superannuation fund, 77.</i>
<i>Station-houses, 71.</i>	<i>Superannuation to chief constables, 79.</i>
<i>Their exemption from toll, 73.</i>	<i>Private constables, 79.</i>
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<i>Neglect of duty, 74.</i>	<i>Returns, 80.</i>
	<i>Expenses, 80.</i>

*In what cases appointed.*] By stat. 19 & 20 Vict. c. 69, s. 1, in every county in which a constabulary has not been established for the whole of such county under former Acts, the justices of such county at the general or quarter sessions holden next after the first day of December one thousand eight hundred and fifty-six, shall proceed to establish a sufficient police force for the whole of such county, or where a constabulary is already established in part of such county, then for the residue of such county, and for that purpose shall declare the number of constables they propose should be appointed, and the rates of pay which it would be expedient to pay to the chief and other constables, and shall report such their proceedings to one of Her Majesty's principal secretaries of state; and upon the receipt from the secretary of state of such rules as are mentioned in 2 & 3 Vict. c. 93, s. 3, all the provisions of the said Act, and of 3 & 4 Vict. c. 88, shall take effect and be applicable in relation to such county, in like manner as by the said Acts provided, upon the adoption of such Acts for any county by the justices thereof, and the receipt of such rules as aforesaid from the secretary of state, subject nevertheless to the amendments contained in this Act. 19 & 20 Vict. c. 69, s. 1.

And in any county where, after the establishment under former Acts of a constabulary for any division or divisions thereof, constables have been or shall be appointed under such Acts and this Act, or any of them, for the residue of the county, or for divisions constituting together such residue,—there shall be one general county police establishment; and any divisional police establishment or establishments which may have been constituted in such county shall be consolidated with and form part thereof, and a chief constable shall be appointed for such county, in like manner and with the like powers as in any case where a police force is established for the whole county in the first instance. *Id.* s. 3.

However, in case it appear to Her Majesty in council, upon

the petition of persons contributing, or who on the establishment of a constabulary under the said former Acts, or this Act, will be liable to contribute to the police of any county, that a distinction should be made in the number of constables to be appointed to keep the peace in different parts of such county, it shall be lawful for Her Majesty, by the advice of her privy council, to order and require the justices of such county to exercise the powers given by stat. 3 & 4 Vict. c. 88, for the division of such county into police districts; and the said justices shall thereupon, in manner directed by such Act, and subject to such approval as therein mentioned, divide such county into such police districts as shall appear to them most convenient, and declare the number of constables which ought to be appointed for each police district; and the extent of such districts, and the number of constables appointed for each, may be altered as in the said Act provided: and the expenses to be defrayed by each such police district shall be ascertained in the manner provided by the said last-mentioned Act, and the police rates assessed and levied therein accordingly: provided, that notice of every such petition, and of the time when it shall please Her Majesty to order that the same be taken into consideration by her privy council, shall be published in the *London Gazette* one month at least before such petition shall be considered. *Id.* s. 4.

And for these purposes, all detached parts of counties, and also all liberties and franchises (other than incorporated boroughs under stat. 5 & 6 W. 4, c. 76), shall be considered as forming part of that county by which they are surrounded, or if partly surrounded by two or more counties then as forming part of that county with which they have the longest common boundary; and so much of every such detached part of any county, or of any liberty and franchise, which is not of itself an entire hundred, wapentake, ward, rape, lathe, or such other division of a county, shall be considered as forming part of that hundred, ward, wapentake, rape, lathe, or such other division, whereby it shall be surrounded in the county of which it shall be considered a part for the purposes of this Act, or if partly surrounded by two or more hundreds, wapentakes, wards, rapes, lathes, or such other divisions, then as forming part of that one with which it shall have the longest common boundary. 2 & 3 Vict. c. 93, s. 27.

And by stat. 3 & 4 Vict. c. 88, s. 2, reciting the last-mentioned section, and reciting that many populous towns are situated in more than one county; and also that the boundary of many counties is so irregular that parts thereof, although not wholly separated from the main body of the county, may yet be more conveniently united, for the purposes of the said Act, with some neighbouring county: it is enacted, that it shall be lawful for the justices of any two or more neighbouring counties, in their several general or quarter sessions

assembled, from time to time to agree that such parts of their several counties as to them shall seem fit, shall, for the purposes of the said Act be considered as forming part of any other of the said counties; and whenever any such district shall be so transferred, for the purposes of the said Act, from one county to another, with the consent of the justices of both the last-mentioned counties, such district shall be considered, for the purposes of the said Act, as if it were detached from the county to which it belongs, and wholly surrounded by the county to which it is so transferred; and all the provisions contained herein or in the said Act, or in stat. 2 & 3 Vict. c. 82, respecting detached parts of counties, shall be taken to apply to such transferred districts. 3 & 4 Vict. c. 88, s. 2.

But the above Act (2 & 3 Vict. c. 93) shall not extend to authorize the justices of the peace of any county to appoint any constable within any borough incorporated under the provisions of stat. 5 & 6 W. 4, c. 76, or under the provisions of any charter granted in pursuance of the said Act; nor shall any such borough, for which a separate court of quarter sessions of the peace shall be holden, be liable to contribute to the expenses of this Act, or to be charged with any part thereof in their account with the treasurer of such county. 2 & 3 Vict. c. 93, s. 24.

And upon the appointment of constables under the Act in any county, the power to appoint and pay, and to make rates for paying, any constables, in any hundred, parish, township, or place within such county, division or divisions, except such boroughs as aforesaid, other than high constables, or other than special constables appointed under stat. 1 & 2 W. 4, c. 41, or of any Act made for enlarging the powers of magistrates under the said Act, or otherwise than under this Act, and also all the powers and duties of all such constables, shall cease and determine; and all sums of money then already levied for the purpose of such other constables shall be applied, after defraying all charges to which the same are then liable, in and towards payment of the county rates levied upon such hundred, parish, township, or place; provided always, that all arrears of rates made for the purposes aforesaid, shall be levied and collected as if this Act had not been made; provided also, that nothing herein contained shall prevent or invalidate the appointment of parochial constables; provided also, that nothing herein contained shall prevent the appointment of any constable to act as returning officer in any election, whenever such appointment may be necessary. 2 & 3 Vict. c. 93, s. 25.

*Appointment of the chief constable.]* As soon as the rules, as finally settled, shall have been received from the secretary of state, the justices of the county in general or quarter ses-

sion assembled, or at any adjournment thereof, shall, subject to the approval of the secretary of state, appoint a person duly qualified according to the rules to be chief constable of the county, and in every case of vacancy of the office shall, subject to the like approval, appoint another fit person in his room; and every chief constable so to be appointed may hold his office until dismissed by the justices in general or quarter session assembled, or at any adjournment thereof: provided always, that when any county shall have been divided for the purpose of returning members to serve in parliament for each division, it shall be lawful to appoint two chief constables for such county, if the justices of such county shall think fit: provided also, that it shall be lawful to appoint the same chief constable for two or more adjoining counties or parts of counties, if the justices of such counties in general or quarter sessions assembled shall mutually agree to join in such appointment. 2 & 3 Vict. c. 93, s. 4.

And in any county in which two chief constables shall have been appointed under the authority of the said Act, the justices of the county, if they shall think fit, in general or quarter session assembled, may order that separate accounts shall be kept of the expenses of the force placed under the authority of each chief constable, and that the police rates shall be assessed and levied separately upon the districts of each chief constable, and applied separately to the expenses of the police force maintained therein. 3 & 4 Vict. c. 88, s. 25.

And every chief constable shall, on the first day of every month, transmit to the clerk of the peace for the county, for which or for some district whereof such constable shall act, a return showing the actual disposition and number of the constabulary force of the county or district for which such constable shall act during the preceding month, which return shall specify the changes made from time to time in such force as well in number as by name, and shall distinguish by number and name the members of the police force of any other district serving within his district; and the clerk of the peace shall cause the said return to be laid before the justices at the next ensuing quarter sessions for examination. 3 & 4 Vict. c. 88, s. 31.

*Deputy chief constable.*] The chief constable shall (subject to the approval of the justices in general or quarter sessions assembled, or at any adjournment thereof,) appoint one of the superintendents to act as his deputy, in case of his being incapable, from illness or necessary absence from the county, to perform the duties of chief constable of the county; and the deputy so appointed shall in such case as aforesaid, and also in case of any vacancy of the office of chief constable by death or otherwise, have all the powers, privileges, and duties of the



chief constable : provided always, that no deputy chief constable shall be capable of continuing to act with the powers of chief constable during any vacancy of the office for more than three calendar months after the vacancy has been occasioned. 2 & 3 Vict. c. 93, s. 7.

*Superintendents, &c.*] By stat. 2 & 3 Vict. c. 93, s. 6, the chief constable, subject to the approval of two or more justices in petty sessions, was to appoint a superintendent to be at the head of the constables in each division of the county, with power to dismiss them at his pleasure. But by stat. 3 & 4 Vict. c. 88, s. 26, reciting that it was found unnecessary that a superintendent should be appointed for every petty sessional division of a county, it was enacted, that it shall be lawful for the justices in general or quarter session assembled, with the approval of one of Her Majesty's principal secretaries of state, to direct how many of the constables shall be appointed superintendents, and to direct the appointment of inspectors and serjeants and other subordinate officers, with such gradations of rank and pay and such variety of duties as shall be found expedient ; and it shall be lawful for the justices to make such orders as to them shall appear expedient touching the attendance of the superintendents, inspectors, serjeants, or other subordinate officers among the said constables upon the justices at their several sessions. 3 & 4 Vict. c. 88, s. 26.

And every superintendent appointed under the Act shall, on the first day of every month, send to the chief constable a return showing the actual disposition and number of the constables of the county under his superintendence during the preceding month, which return shall specify the changes made from time to time therein, as well in number as by name ; and the chief constable shall send a copy of all such returns to the clerk of the peace for the county, to be laid before the justices of the peace at their next general or quarter sessions of the peace. 3 & 4 Vict. c. 88, s. 32.

*Appointment of the petty constables.*] Subject to the approval of two or more of the justices of the county in petty sessions assembled, the chief constable shall appoint the other constables to be appointed for the county, and at his pleasure may dismiss all or any of them, and shall have the general disposition and government of all the constables so to be appointed, subject to such lawful orders as he may receive from the justices in general or quarter session assembled, or at any adjournment thereof, and to the rules established for the government of the force. 2 & 3 Vict. c. 93, s. 6.

And no constable appointed under this Act shall be at liberty to resign his office, or to withdraw himself from the duties thereof, unless expressly allowed so to do, in writing,

by the chief constable or superintendent under whom he may be placed, or unless he shall give to such chief constable or superintendent one calendar month's notice of his intention ; and every constable who shall so resign or withdraw himself without such leave or notice, shall be liable, on being convicted thereof before any two justices of the peace for the county, to forfeit all arrears of pay then due to him, or to a penalty not more than five pounds. 2 & 3 Vict. c. 93, s. 13.

And all chief or other constables appointed under this Act, shall be restrained from employing themselves in any office or employment for hire or gain, other than in the execution of their duties under this Act, and shall be exempt from being returned and from serving upon any juries or inquests whatsoever, or in the militia, nor shall they be inserted in any jury lists while they shall continue to be such constables. 2 & 3 Vict. c. 93, s. 10.

And every person not being a constable appointed under this Act, who shall have in his possession any article being part of the clothing, accoutrements, or appointments supplied to any such constable, and who shall not be able satisfactorily to account for his possession thereof, or who shall put on the dress, or take the name, designation, or character of any person appointed as such constable, for the purpose of thereby obtaining admission into any house or other place, or of doing or procuring to be done any act which such person would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, shall, in addition to any other punishment to which he may be liable for such offence, be liable, on being convicted thereof before any two justices of the peace for the county, to a penalty not more than ten pounds. 2 & 3 Vict. c. 93, s. 15.

*Station-houses.*] The justices in general or quarter session assembled of any county in which or in any part of which constables shall be appointed under stat. 2 & 3 Vict. c. 93, if they think fit, may order that station-houses and strong rooms or either of them, for the temporary confinement of persons taken into custody by the constables, be provided in such places as the said justices shall think fit, and upon such plan as shall be approved by one of Her Majesty's principal secretaries of state, and for that purpose to purchase and hold lands and tenements, or to appropriate to that purpose any lands or tenements belonging to the county which are not needed for the purpose to which they were applied or intended to be applied before such appropriation ; and the expense of building, hiring, or otherwise providing, repairing, and furnishing such station-houses and strong rooms shall be defrayed out of the police rates. 3 & 4 Vict. c. 88, s. 12.

And for facilitating the purchase of lands and tenements for

the purposes mentioned in stat. 3 & 4 Vict. c. 88, s. 12, the provisions of "The Lands Clauses Consolidation Act, 1845," except the provisions with respect to the purchase and taking of lands otherwise than by agreement, shall be incorporated with the said Act of the third and fourth year of Her Majesty and this Act; and the expression "the promoters of the undertaking" in the said Lands Clauses Consolidation Act, shall for the purposes of such incorporation mean the justices of the peace of any county in general or quarter sessions assembled; and the powers of providing station-houses and strong rooms contained in stat. 3 & 4 Vict. c. 88, ss. 12, 13, and this Act shall extend to authorize the providing of such station-houses and strong rooms within any borough lying within or adjoining to the county for which the same may be provided. 19 & 20 Vict. c. 69, s. 23.

And stat. 7 G. 4. c. 18, "To authorize the Disposal of unnecessary Prisons in England," shall extend to and include all station-houses, lock-up houses, strong rooms, and the sites thereof, and all other lands and tenements whatsoever which may at any time be vested in the justices of the peace of any county, or in any persons in trust for them, for the purposes of the police, and which in the judgment of such justices shall for any reason whatever have become unnecessary. 19 & 20 Vict. c. 69, s. 24.

The justices in general or quarter session assembled, may borrow money for the purpose of purchasing any such lands and tenements, or of building any such station-houses and strong rooms, and to charge the future police rates with the amount of the loan, and with interest thereon; provided always, that any money borrowed for such purpose shall be repaid by yearly instalments, not less than one-twentieth part of the sum borrowed, with interest on the same, in any one year. 3 & 4 Vict. c. 88, s. 13.

But where a station-house or strong room shall have been provided under the said Act of the third and fourth years of Her Majesty, section twelve, for any police district or division within any county in which the provisions of the said Act of the second and third years of Her Majesty, have not been put in force throughout the whole of such county before the passing of this Act, and the cost of such station or strong room has been incurred out of or now remains wholly or in part chargeable on the police rate for such police district or division, the justices of the peace for the county wherein such police district or division is situate, at any quarter sessions to be held after the passing of this Act, shall or may purchase such station-house or strong room for such sum of money as may be determined by such justices, and hold the same for and on behalf of the county or riding for the purposes of this Act, and pay the purchase monies for the same out of the

general county rate for the said county; and where the cost of erecting such station-house or strong room shall at the passing of this Act be chargeable by way of mortgage either wholly or in part on the police rates for such police district or division it shall be lawful for the said justices to transfer such charge from the police rates leviable in such police district or division to and continue such charge upon the county rate of the county in which such police district or division shall be situate; and the police rates of the said police district or division shall be thenceforth discharged from all future payments in respect of the said station-house or strong room; and all mortgages or other instruments then operating by way of charge on the said police rates in respect of such station-house or strong room shall be thereafter deemed to be charges on the general county rate of the said county, in the same manner as if the same had been originally charged on such county rate, and such station-house or strong room shall thenceforth be the property of the said county for the purposes of this Act. 19 & 20 Vict. c. 69, s. 22.

*Their exemption from toll.]* No toll shall be demanded or taken on any turnpike road or bridge, for any horse, or police van, carriage, or cart passing along such road or bridge, in the service of the police established under the provisions of stat. 2 & 3 Vict. c. 93; provided that the constable in charge of such horse, van, carriage, or cart, if not the chief constable, shall produce an order in writing under the hand of the chief constable, or shall have his dress according to the regulations of the police force at the time of claiming the exemption; and every person who shall fraudulently claim or take the benefit of the exemption from toll herein contained, not being lawfully entitled thereunto, shall for every such offence be liable to a penalty not more than five pounds; and in all such cases the proof of exemption shall be upon the person claiming the same. 3 & 4 Vict. c. 88, s. 1.

*Their powers and duties.]* The chief constable and other person so appointed shall be sworn as constables before a justice of the county, and shall have all the powers, privileges, and duties throughout the county, and also in all liberties and franchises, and detached parts of other counties locally situated within such county, and also in any county adjoining to the county for which they are appointed, which any constable duly appointed has within his constablewick by virtue of the common law, or of any statute made or to be made [see *post*, p. 94]; and every provision of stat. 1 & 2 W. 4, c. 41, as to special constables [see *post*, p. 88] shall be deemed to extend to the constables appointed under this Act, except as to the

manner of their appointment and dismissal, the time for which they shall serve, and the manner in which their allowances shall be paid, or as to any matter herein expressly otherwise provided. 2 & 3 Vict. c. 93, s. 8. Any other duties will be specified in such rules as the secretary of state may make under the 3rd section of that Act.

Also, the constables of every county appointed under the said Acts of the second and third and third and fourth years of Her Majesty or either of them, or this Act, shall have, in every borough situate wholly or in part within such county, or within any county or part of a county in which they have authority, all such powers and privileges and be liable to all such duties and responsibilities as the constables appointed for such borough have and are liable to within any such county, and shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within any such borough in which they shall be called on to act as constables, for conducting themselves in the execution of their office. 19 & 20 Vict. c. 69, s. 6.

And the constables acting under the said Acts of the second and third and third and fourth years of Her Majesty, the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts, shall, in addition to their ordinary duties, perform all such duties connected with the police in their respective counties or boroughs as the justices in general or quarter sessions assembled, or the watch committees of such respective counties or boroughs, from time to time direct or require. 19 & 20 Vict. c. 69, s. 7.

*Neglect of duty.*] Every constable appointed under this Act, who shall be guilty of any neglect or violation of duty in his office of constable, and shall be convicted thereof before any two justices of the peace for the county, shall be liable to a penalty not more than ten pounds, the amount of which penalty may be deducted from any salary then due to such offender, or, in the discretion of the justices by whom he shall be convicted, may be imprisoned, with or without hard labour, for any time not more than one calendar month. 2 & 3 Vict. c. 93, s. 12.

*Publicans harbouring them.*] If any victualler, or keeper of any house, shop, room, or other place for the sale of any liquors, whether spirituous or otherwise, shall knowingly harbour, or entertain any constable belonging to the said force, or permit such constable to abide or remain in his house, shop, room, or other place, during any part of the time appointed for his being on duty, every such keeper or victualler as aforesaid, being convicted thereof before any two justices of the peace

for the county, shall, for every such offence, forfeit and pay such sum, not exceeding five pounds, as they shall think meet. 2 & 3 Vict. c. 93, s. 16.

*Their dismissal.*] The chief constable, we have seen, may be dismissed by the justices in quarter sessions (2 & 3 Vict. c. 93, s. 4, *ante*, p. 69); and the petty constables may be dismissed by the chief constable. *Id.* s. 6, *ante*, p. 70. And every constable who shall be dismissed from or shall cease to hold and exercise his office, and who shall not forthwith deliver all the clothing, accoutrements, appointments, and other necessities which may have been supplied to him for the execution of his duty to the chief constable or superintendent, or to such person and at such time and place as shall be directed by the said chief constable or superintendent, shall be liable, on being convicted thereof before any two justices of the peace for the county, to imprisonment, with or without hard labour, for any time not exceeding one calendar month; and it shall be lawful for any justice of the peace to issue his warrant to search for and seize to the use of the county police all the clothing, accoutrements, appointments, and other necessities which shall not be so delivered over, wherever the same may be found. 2 & 3 Vict. c. 93, s. 14.

*Local constables.*] The chief constable shall make out and cause to be laid before the justices acting in and for every petty sessional division of the county, at one of their special sessions holden for hearing appeals against the poor rates, a list, signed by him, of fit persons residing within every parish, township, and place within the division, willing, in case of need, to serve as local constables during the year then next ensuing, for doing all things which belong to the office of constable within such parish, township or place; and the justices of each of such divisions, at any time, in petty sessions assembled, shall select from the persons named in such lists so many local constables as they shall think fit to appoint for every such parish, township, or place, and shall cause to be administered to them the following oath, that is to say—

*I, A. B., do swear that I will well and truly serve our sovereign Lady the Queen in the office of local constable for the parish [or township, &c.] of [—] for the year ensuing, or until another shall be sworn in my stead, according to the best of my skill and knowledge. So help me God.*

And all such local constables shall be subject to the authority of the chief constable, and to such regulations as shall be made for their government by one of Her Majesty's principal secretaries of state, and shall have within the whole county, and

within all liberties and franchises and detached parts of other counties situated therein, and also in every county adjoining to the county in which they are appointed, all the powers, privileges, and immunities, and shall be liable to all the duties and responsibilities, of a constable within his constablewick, but shall not be bound to act as a constable beyond the parish, township, or place for which they are severally appointed and sworn; and the chief constable, from time to time, shall cause a list to be printed and published of the persons so appointed and sworn as local constables within each division, with the names of the places for which they are severally appointed. 3 & 4 Vict. c. 88, s. 16.

*Their pay, fees, &c.]* The pay is regulated by the rules of the secretary of state before referred to, *ante*, p. 74. Also, in addition to the salary to be paid to the chief constable of the county, reasonable allowances shall be made to him for extraordinary expenses necessarily incurred by him, and by the constables under his orders in the apprehension of offenders, and in the execution of his and their duty under this Act; which allowances shall be examined and audited by the justices of the county in quarter session assembled. 2 & 3 Vict. c. 93, s. 18.

And the justices of the county in general or quarter session assembled shall, from time to time (subject to the approval of one of Her Majesty's principal secretaries of state), settle tables of fees and allowances for the service of summonses and execution of warrants, and for the performance of the other occasional duties which may be required of the said local constables; and whenever any duty for which any such fee or allowance shall have been settled shall be performed by one of the constables appointed under stat. 2 & 3 Vict. c. 93, the amount thereof shall be accounted for and paid to the treasurer of the county, or such other person as shall be appointed by the justices to receive the same, and shall be applied towards defraying the expenses of putting the said Act in execution; and when such duty shall have been performed by one of the local constables appointed under this Act, the amount of the fee or allowance shall be paid to such local constable, under such regulations as shall be made from time to time by the justices in general or quarter session assembled. 3 & 4 Vict. c. 88, s. 17.

Also, by stat. 19 & 20 Vict. c. 69, s. 8, it shall not be lawful for any constable acting under the said Acts of the second and third and third and fourth years of Her Majesty, and the fifth and sixth years of King William the Fourth, and this Act, or any of the said Acts (other than a local constable appointed under the said Act of the third and fourth years of Her Majesty),

to receive to his own use any fee for the performance of any act done by him in the execution of his duty as such constable; but this enactment shall not extend to prevent the receipt by any such constable of any fee or other payment legally payable which he may be liable to account for and pay over to the treasurer of the county or borough, or otherwise for the use of the county or borough, or which may be payable to, or applied in aid of, any police superannuation fund established or to be established in any borough, under the provisions of the Act of the session holden in the eleventh and twelfth years of Her Majesty, chapter fourteen, or of any local or other Act of parliament. But, by sect. 12, it shall be lawful for the magistrates in general or quarter sessions assembled, if they so think fit, to grant gratuities to such officers as may be removed from their appointments in consequence of the duties of such officers being transferred to persons belonging to the police establishment.

And the justices usually acting in and for every division, shall take care that full, true, and particular accounts be kept of all such fees and allowances within their division, and shall once in every quarter of a year cause an account, with all proper vouchers for verifying the same, to be delivered to the treasurer of the county or other person appointed to receive the same. 3 & 4 Vict. c. 88, s. 18.

*Superannuation fund.*] There shall be deducted from the pay of every constable belonging to the police force established in any county under stat. 2 & 3 Vict. c. 93, a sum after such yearly rate as the justices of the county in general or quarter session assembled shall direct, not being a greater sum than two pounds ten shillings in a hundred pounds, which sum so deducted, and also the moneys accruing from stoppages from any of the said constables during sickness, and fines imposed on any of the said constables for misconduct, and from any portion of the fines imposed by any justice of the peace upon drunken persons, or for assaults upon police constables, and from moiety of fines and penalties awarded to informers (being police constables) on summary convictions, as shall be directed by such justice to be paid for the benefit of this fund, and all moneys arising from the sale of worn or cast clothing supplied for the use of the constables in any county, shall from time to time be invested in such manner as the justices in general or quarter session assembled shall direct; and the interest and dividends thereof, or so much of the same as shall not be required for the purposes hereinafter mentioned, shall be likewise invested in the like manner, and accumulate so as to form a superannuation fund, and shall be applied from time to time for payment of such superannuation or retiring allow-



ances or gratuities as may be ordered by the justices in general or quarter session assembled, upon the recommendation of the chief constable, at any time, to any of the said constables, as hereinafter provided; and the justices shall guarantee the security of the superannuation fund of their county, and make good out of the county stock any deficiency which may arise in such fund from the default of any treasurer or other person intrusted with the custody or management thereof. 3 & 4 Vict. c. 88, s. 10.

The justices, upon such recommendation, if they shall think fit, may order that any of the said constables may be superannuated, and receive thereupon out of the superannuation fund a yearly allowance, subject to the following conditions, and not exceeding the following proportions; (that is to say,) that if he shall have served with diligence and fidelity for fifteen years and less than twenty years, an annual sum not more than half his pay; if for twenty years or upwards an annual sum of not more than two-thirds of his pay; provided that if he shall be under sixty years of age it shall not be lawful to grant any such allowance unless upon the certificate of the chief constable that he is incapable, from infirmity of mind or body, to discharge the duties of his office; provided also, that if any constable shall be disabled from any wound or injury received in the actual execution of the duty of his office, it shall be lawful to grant him any allowance not more than the whole of his pay; but nothing herein contained shall be construed to entitle any constable absolutely to any superannuation allowance, or prevent him being dismissed without superannuation allowance. 3 & 4 Vict. c. 88, s. 11.

By stat. 19 & 20 Vict. c. 69, s. 10, it shall be lawful for the justices of any county in general or quarter sessions assembled, if they think fit, upon the recommendation of the chief constable, and upon his certifying that any constable belonging to the police force of the county, who has not served so long as fifteen years, is incapable from infirmity of mind or body to discharge the duties of his office, to order that such constable shall receive out of the superannuation fund mentioned in the said Act of the third and fourth years of Her Majesty such sum in gross as a gratuity upon his retirement as to the said justices may seem proper.

And by sect. 11, if at any time the superannuation fund mentioned in stat. 3 & 4 Vict. c. 88, be insufficient (otherwise than by reason of any default of any treasurer or other person entrusted with the custody or management thereof) to pay the superannuation or retiring allowances and gratuities payable thereout, the amount which such fund shall from time to time be insufficient to pay shall be defrayed by the police rate, and, where the county is divided into police districts, shall be defrayed by the several districts as parts of the

local expenditure thereof, rateably in proportion to the number of constables appointed for each such district respectively. *Id.* s. 11.

*Superannuations to chief constables.]* It shall be lawful for the justices of any county in general or quarter sessions assembled, if they see fit, to grant to any chief constable of the county, on his ceasing to be such chief constable, such annual sum by way of superannuation allowance as they think fit; and such superannuation allowance shall be paid out of the police rate of the county, and shall, in the case of a county which is divided into police districts, be deemed part of the general expenditure, and be defrayed accordingly: provided always, that no such allowance shall be granted to any chief constable under sixty years of age, unless the said justices be satisfied that he is incapable from infirmity of mind or body to discharge the duties of his office; and section eleven of the said secondly recited Act, as to the proportionate amount of the superannuation allowance of any petty constable, shall apply to the superannuation allowance to be granted to any chief constable. 19 & 20 Vict. c. 69, s. 13.

*Private constables.]* The chief constable of any county, with the approval of the justices of the county in general or quarter session assembled (if he shall think fit), on the application of any person or persons showing the necessity thereof, may appoint and cause to be sworn in any additional number of constables, at any place within the limits of his authority, at the charge of the person or persons by whom the application shall be made, but subject to the orders of the chief constable, and for such time as he shall think fit; and every such constable shall have all the powers, privileges, and duties of other county constables: provided always that it shall be lawful for the person or persons on whose application such appointment shall have been made, upon giving one calendar month's notice in writing to the chief constable, to require that the constable so appointed shall be discontinued, and thereupon the chief constable shall discontinue such additional constables. 3 & 4 Vict. c. 88, s. 19.

*Inspectors.]* By stat. 19 & 20 Vict. c. 69, s. 15, it shall be lawful for Her Majesty, by warrant under her royal sign manual, to appoint during Her Majesty's pleasure three persons as inspectors under this Act, to visit and inquire into the state and the efficiency of the police appointed for every county and borough, and whether the provisions of the Acts under which such police are appointed are duly observed and carried into effect, and also into the state of the police stations, charge

rooms, cells, or lock-ups, or other premises occupied for the use of such police; and each of the inspectors so appointed shall report generally upon such matters to one of Her Majesty's principal secretaries of state, who shall cause such reports to be laid before parliament; and such inspectors shall be paid, out of such money as may be provided by parliament for the purpose, such salaries and allowances as shall be determined by the commissioners of Her Majesty's treasury.

*Returns.*] Also by stat. 19 & 20 Vict. c. 69, s. 13, the justices of every county and the watch committee of every borough shall, in the month of October in every year, transmit to one of Her Majesty's principal secretaries of state a statement in such form as one of the said secretaries of state may from time to time direct, for the year ending the twenty-ninth day of September then last, of the number of offences reported to the police within such county or borough respectively, the number of persons apprehended by the police, the nature of the charges against them, the result of the proceedings taken thereupon, and any other particulars relating to the state of crime within such county or borough which such justices or watch committee may think it material to furnish, and a classified abstract of all such reports and returns shall be annually prepared and laid before parliament. *Id.* s. 14.

*Expenses.*] By stat. 19 & 20 Vict. c. 69, s. 16, upon the certificate of one of Her Majesty's principal secretaries of state, that the police of any county or borough established under the provisions of the said Acts and this Act, or any of them, has been maintained in a state of efficiency in point of numbers and discipline for the year ending on the twenty-ninth of September then last past, it shall be lawful for the commissioners of Her Majesty's treasury to pay from time to time, out of the monies provided by parliament for the purpose, such sum towards the expenses of such police for the year mentioned in such certificate as shall not exceed one-fourth of the charge for their pay and clothing, but such payment shall not extend to any additional constables appointed under the nineteenth section of stat. 3 & 4 Vict. c. 88, provided that before any such certificate shall be finally withheld in respect of the police of any county or borough, the report of the inspector relating to the police of such county or borough shall be sent to the justices of such county, or to the watch committee of such borough, who may address any statement relating thereto to the secretary of state; and in every case in which such certificate is withheld, a statement of the grounds on which the secretary of state has withheld such certificate, together with any such statement of the justices or

watch committee as aforesaid, shall be laid before parliament. 19 & 20 Vict. c. 69, s. 16.

But no such sum as aforesaid shall be paid towards the pay and clothing of the police of any borough, not being consolidated with the police of a county under the said Act of the third and fourth years of Her Majesty, or this Act, the population of which borough according to the last parliamentary enumeration for the time being does not exceed five thousand. *Id.* s. 17.

The stat. 19 & 20 Vict. c. 69, contains some sections (ss. 25 to 29) applicable only to the county of Chester, to which the reader, if necessary, is referred.

#### 4. BOROUGH AND COUNTY CONSTABLES CONSOLIDATED.

By stat. 3 & 4 Vict. c. 88, s. 14, it shall be lawful for the justices of any county in which constables shall have been appointed under stat. 2 & 3 Vict. c. 93, and for the council of any incorporated borough situated in or adjoining to such county, to agree together for the consolidation of the county and borough police establishments; and in every such case all the constables appointed either for the county or the borough shall have all the powers, privileges, and duties throughout the county and the borough, which constables appointed for any county have within that county under the said Act, and all the provisions of the said Act shall be taken to apply to the borough constables as well as to the county constables, as is herein otherwise provided; and every such agreement which shall have been agreed to by the justices of the county in general or quarter session assembled, on the one hand, and by the mayor, aldermen, and burgesses of the borough, by their council, on the other hand, shall be binding on both parties, as soon as a memorandum of such agreement under the hands of two or more justices of the county, and countersigned by the clerk of the peace, shall be delivered to the council of the borough, and a counterpart thereof under the common seal of the borough shall be delivered to the justices; and when any such agreement shall have been made between any county and any borough, either party shall be empowered to put an end thereunto, without the consent of the other party, after six months' notice in writing shall have been given to the other party; such notice, if given by the county, to be under the hands of two or more justices, and countersigned by the clerk of the peace, or, if given by the borough, to be under the common seal of the borough: provided always, that no such notice shall be given by the justices, or by the borough, unless in either case such notice shall be agreed upon by a majority

of three-fourths of the justices attending at any general or quarter session, or three-fourths of the council of the borough.

And no agreement made as aforesaid shall be put an end to without the sanction of one of Her Majesty's principal secretaries of state. 19 & 20 Vict. c. 69, s. 20.

And in all cases where the establishment of county and borough constables shall be consolidated into one police establishment, the chief constable of the county shall have the general disposition and government of all such constables, subject to the provisions hereinafter contained, and at his pleasure may dismiss all or any of them; and whenever the chief constable shall dismiss one of the borough constables he shall report the fact, with his reasons for the dismissal, to the mayor of the borough, and the watch committee of the borough shall forthwith appoint another constable properly qualified, unless provision shall be made in such agreement, that all constables shall be appointed by the chief constable; and no borough constable who shall have been dismissed by the chief constable, shall be capable of being re-appointed for the same borough, without the consent of the chief constable; and so much of the Act for regulating corporations [5 & 6 W. 4, c. 76, see *ante*, p. 66] as empowers the said committee, or any two justices of the peace having jurisdiction within the borough, to dismiss any constable, shall be suspended as to those boroughs whose establishment of constables is consolidated with the establishment of county constables, during the time that any agreement for such consolidation shall be in force. 3 & 4 Vict. c. 88, s. 15.

Also, by stat. 19 & 20 Vict. c. 69, s. 5, in case it be represented to one of Her Majesty's principal secretaries of state by the council of any borough, that application has been made by such council to the justices of any county in or adjoining to which such borough is situate, to consolidate the police of such county and borough in the manner provided by the fourteenth section of the said Act of the third and fourth years of Her Majesty, and that such consolidation has not been effected, it shall be lawful for such principal secretary of state to inquire into the terms of consolidation proposed, and to report thereon to Her Majesty in council; and it shall be lawful for Her Majesty, with the advice of her privy council, to fix the terms and conditions and date upon and from which such consolidation shall take effect, and thereupon the provisions of such last-mentioned Act shall become applicable as if such consolidation had been effected by an agreement made under the said section, save so far as such provisions relate to the determination of such agreement; and it shall be lawful for Her Majesty, with the advice of her privy council, at any time and from time to time to vary the terms of any such consoli-

dition, or at any time to determine such consolidation upon such terms as to Her Majesty in council may seem just. 19 & 20 Vict. c. 69, s. 5.

**5. CONSTABLES ON CANALS AND NAVIGABLE RIVERS.**

<i>Their appointment</i> , 83.	<i>Their dismissal</i> , 86.
<i>How and by whom paid</i> , 84.	<i>Assaulting them</i> , 87.
<i>Their power and duties</i> , 84.	<i>Actions against them</i> , 87.
<i>Neglect of duty</i> , 86.	

*Their appointment.*] Whereas robberies and other outrages are frequently committed on canals and navigable rivers throughout England and Wales, and it is expedient that power be given to appoint constables for better keeping the peace, and for the prevention and detection of crime, along the line of such canals and rivers, and in the neighbourhood thereof: it is therefore enacted, that any two justices of the peace, and for the watch committee of any incorporated borough, within their several jurisdictions, on the application of the committee or board of directors acting in the management of the affairs of the company of proprietors of any canal or navigable river, or of any clerk or agent of any such company, duly authorized by such committee or board of directors, to appoint so many persons as they shall think fit from among those who shall be recommended to them for that purpose by such company of proprietors, clerk, or agent, to act as constables on and along such canal or river; and every person so appointed shall take an oath or make a solemn declaration in the form or to the effect following; (that is to say,)

*I, A. B., having been appointed a constable to act upon and along the [name the canal or navigable river,] under the provisions of [here insert the title of this Act,] do swear, that I will well and truly serve our sovereign Lady the Queen in the said office of constable, without favour or affection, malice or ill-will; and that I will, to the best of my power, cause the peace to be kept, and prevent all offences against the peace; and that, while I continue to hold the said office, I will, to the best of my skill and knowledge, discharge the duties thereof faithfully according to law.*

*So help me God.*

Such oath or declaration to be administered by any one such justice. 3 & 4 Vict. c. 50, s. 1.

And all the powers, hereby vested in any company of proprietors of any such canal or navigable river, may be exercised by the directors or committee of management, or other body

of persons, under whatever style or name they may be known, duly authorized according to the constitution of such company, to manage the affairs of such company respectively ; and if there shall be no such body, or more than one such body, so that it may be doubtful by whom the said powers ought to be exercised, then by such body of persons as shall be appointed for that purpose by the proprietors at any general or special meeting of the proprietors convened for that purpose, with the like forms and notices as are required by law in each case respectively with regard to such meetings. 3 & 4 Vict. c. 50, s. 20.

*How and by whom paid.]* Every such company of proprietors may pay to every such constable, out of the moneys and effects of the company, such salary or allowances, and at such times and in such manner, as the company shall think fit. 3 & 4 Vict. c. 50, s. 3.

*Their power and duties.]* Every person so appointed, and having taken such oath or made such declaration as aforesaid, shall have full power to act as constable for the preservation of the peace, and for the security of persons and property against felonies and other unlawful acts, on such canal or river, and the towing paths and works belonging thereto, and on and within any railways, tramroads, wharfs, quays, locks, docks, landing-places, warehouses, lands, and premises belonging to any such company, and in all places not more than one quarter of a mile distant from either bank of such canal or river, or from such railways,—and shall have all such powers, protections, and privileges for the apprehending of offenders, as well by night as by day, and for doing all things for the prevention, discovery, and prosecution of felonies and other offences, and for keeping the peace, which any constable duly appointed has within his constablewick (see *post*, p. 94) : provided always that such power shall not extend to authorize any such person to act as such constable within the metropolitan police district, or the city of London and the liberties thereof, or in any places beyond the banks, towing paths, and other the premises belonging to such company, as may be situate within any other city or any incorporated borough. 3 & 4 Vict. c. 50, s. 1.

Every constable appointed as aforesaid having just cause to suspect that any felony, or any other offence contrary to the provisions of this Act, has been or is about to be committed in or on board of any boat or other vessel lying in any such canal or river, or any lock or dock thereunto belonging, is empowered to enter at all times, as well by night as by day, into and upon every such boat or other vessel, and therein to take all necessary measures for the prevention or detection of all

felonies or other offences which he has just cause to suspect to have been or to be about to be committed, and to take into custody all persons suspected of being concerned in such felonies or other offences, and also to take charge of all property so suspected to be stolen or embezzled. 3 & 4 Vict. c. 50, s. 9.

Also, any such constable may take into custody, without a warrant, any loose, idle, and disorderly person whom he shall find disturbing the public peace,—or whom he shall have good cause to suspect of having committed or being about to commit any felony, misdemeanor, or breach of the peace, or other offence contrary to the provisions of this Act,—and every person whom he shall find, between sunset and the hour of eight in the morning, lying or loitering in or upon any towing path, or in or upon any wharf, bridge, railway, quay, landing-place, lock, dock, or upon the bank of any such canal or river, and not giving satisfactory account of himself. 3 & 4 Vict. c. 40, s. 10.

And any person found committing any offence punishable upon summary conviction by virtue of this Act, may be taken into custody, without warrant, by any constable, or may be apprehended by the owner of the property with respect to which the offence shall be committed, or by his servant, or any person authorized by him, and may be detained until he can be delivered into the custody of a constable to be dealt with according to law; and every such constable may also stop, search, and detain any vessel, boat, cart, or carriage in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained. 3 & 4 Vict. c. 50, s. 11.

As to the offences punishable by the Act, on summary conviction :—it is enacted by sect. 7, that every person who shall be found upon every such canal or river, or in or upon any lock, dock, warehouse, wharf, quay, or bank thereof, or on board of any boat or vessel lying or being in any such canal or river, or in any lock or dock thereunto belonging, having in his possession or under his control any tube or other instrument for the purpose of unlawfully obtaining any wine, spirits, or other liquors or goods, or having in his possession any skin, bladder, or other utensil for the purpose of unlawfully secreting or carrying away any such wine, spirits, or other liquors or goods,—and any person who shall attempt unlawfully to obtain any such wine, spirit, or other liquors or goods,—shall for every such offence be liable to a penalty not more than five pounds, or, in the discretion of the magistrate before whom he shall be convicted, may be imprisoned as aforesaid, with or without hard labour, for any time not more than one calendar



month. 3 & 4 Vict. c. 50, s. 7. And every person who shall bore, pierce, break, cut open, or otherwise injure any cask, box, or package containing wine, spirits, or other liquors, or any case, box, sack, wrapper, package, or roll of goods, on board of any boat, vessel, or waggon, or in or upon any warehouse, wharf, quay, or bank, of or belonging to any such canal or river, with intent feloniously to steal or otherwise unlawfully obtain or to injure the contents or any part thereof,—or who shall unlawfully drink or wilfully spill or allow to run to waste any such liquors or any part thereof,—shall for every such offence be liable to a penalty not more than five pounds, over and above the value of the goods or liquors so taken or destroyed, or, in the discretion of the magistrate before whom he shall be convicted, may be imprisoned as aforesaid, with or without hard labour, for any time not more than one calendar month. 3 & 4 Vict. c. 50, s. 8.

*Neglect of duty.*] And every constable who shall be guilty of any neglect or breach of duty, in his office of constable, shall be liable to a penalty not more than ten pounds, the amount of which penalty may be deducted from any salary due to such offender, or, in the discretion of the magistrate before whom such offender shall have been convicted, such offender may be imprisoned in the gaol or house of correction for the county or place in which such offence shall have been committed, with or without hard labour, for any time not more than one calendar month. 3 & 4 Vict. c. 50, s. 4.

*Their dismissal.*] Any two justices, or the watch committee of any incorporated borough, may dismiss any constable who shall act within their several jurisdictions, and the company of proprietors of any such canal or river for which any constable shall be appointed, or any clerk or agent of such company duly authorized by the committee or board of directors of such companies, may also dismiss any such constable from his office of constable; and upon every such dismissal all powers, protections, and privileges belonging to any such person by reason of such appointment shall wholly cease; and no person so dismissed shall be capable of being again appointed or acting as a constable for the same canal or river, without the consent of the authority by which he was dismissed. 3 & 4 Vict. c. 50, s. 2.

And every constable who shall be dismissed from or shall cease to hold his office, and who shall not forthwith deliver over all the clothing, accoutrements, appointments, and all other necessities which have been supplied to him for the execution of his duty, to such person and at such time and place as shall be directed by the company on whose recommendation he shall have been appointed, or by any clerk or agent of such

company duly authorized by the company to receive the same, shall be liable to be imprisoned in any gaol or house of correction as aforesaid, with or without hard labour, for any time not exceeding one calendar month ; and it shall be lawful for any justice of the peace to issue his warrant to search for and seize, to the use of such company, all the clothing, accoutrements, appointments, and other necessities which shall not be so delivered over, wherever the same may be found. 3 & 4 Vict. c. 50, s. 5.

*Assaulting them.*] Every person who shall assault or resist any constable appointed as aforesaid in the execution of his duty, or who shall aid or incite any person so to assault or resist, shall for every such offence be liable to a penalty not more than ten pounds, or, in the discretion of the magistrate before whom he shall be convicted, may be imprisoned in any gaol or house of correction as aforesaid, with or without hard labour, for any time not more than two calendar months. 3 & 4 Vict. c. 50, s. 6.

*Actions against them.*] All actions and prosecutions to be commenced against any person for anything done in pursuance of this Act, shall be laid and tried in the county where the fact was committed,—and shall be commenced within six calendar months after the fact committed, and not otherwise ;—and notice in writing of such cause of action shall be given to the defendant one calendar month at the least before the commencement of the action ;—and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence, at any trial to be had thereupon ;—and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought by or on behalf of the defendant ;—and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases ;—and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial is had shall certify his approbation of the action and of the verdict obtained thereupon. 3 & 4 Vict. c. 50, s. 18.

## 6. SPECIAL CONSTABLES.

<i>In what cases and how appointed, 88.</i>	<i>Their allowance and expenses, 92.</i>
<i>Refusal to be sworn or to serve, 89.</i>	<i>Assaulting or resisting them, 93.</i>
<i>Where and how they may act, 90.</i>	<i>Special constables in boroughs, 93.</i>
<i>Service determined, 91.</i>	

*In what cases and how appointed.]* In all cases where it shall be made to appear to any two or more justices of the peace of any county, riding, or division having a separate commission of the peace, or to any two or more justices of the peace of any liberty, franchise, city, or town in England or Wales, upon the oath of any credible witness, that any tumult, riot, or felony has taken place or may be reasonably apprehended in any parish, township, or place situate within the division or limits for which the said respective justices usually act, and such justices shall be of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace, and for the protection of the inhabitants and the security of the property in any such parish, township, or place as aforesaid, then and in every such case such justices, or any two or more justices acting for the same division or limits, are hereby authorized to nominate and appoint, by precept in writing under their hands, so many as they shall think fit of the householders or other persons (not legally exempt from serving the office of constable—see *ante*, p. 49,) residing in such parish, township, or place as aforesaid, or in the neighbourhood thereof, to act as special constables, for such time and in such manner as to the said justices respectively shall seem fit and necessary for the preservation of the public peace, and for the protection of the inhabitants, and the security of the property in such parish, township, or place; and the justices of the peace who shall appoint any special constables, by virtue of this Act, or any one of them, or any other justice of the peace acting for the same division or limits, are and is hereby authorized to administer to every person so appointed the following oath; (that is to say,)

*I, A. B., do swear, that I will well and truly serve our sovereign [Lady the Queen] in the office of special constable for the parish [or township] of —, without favour or affection, malice or ill-will; and that I will to the best of my power cause the peace to be kept and preserved, and prevent all offences against the persons and properties of Her Ma-*

*jeasty's subjects ; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law.*

*So help me God.*

Provided always, that whenever it shall be deemed necessary to nominate and appoint such special constables as aforesaid, notice of such nomination and appointment, and of the circumstances which have rendered such nomination and appointment expedient, shall be forthwith transmitted by the justices making such nomination and appointment to one of Her Majesty's principal secretaries of state, and to the lieutenant of the county. 1 & 2 W. 4, c. 41, s. 1.

And in any case in which any number of the householders, or other persons not legally exempt from serving the office of constable, shall have been appointed by the justices in manner aforesaid to act as special constables for any such parish, township, or place as aforesaid, it shall be lawful for any one of Her Majesty's principal secretaries of state, on the representation of any two justices of the peace, to order that the persons exempt by law from serving as special constables in such parish, township, or place, or the neighbourhood thereof, shall, notwithstanding such exemption, be appointed, and sworn in to act as special constables as if they were not by law exempt ; and such persons shall accordingly be appointed and sworn in manner aforesaid, and shall be liable to act for two calendar months only. 1 & 2 W. 4, c. 41, s. 2.

Also, it shall be lawful for any one of Her Majesty's principal secretaries of state to give direction to the lieutenant of any county to cause special constables to be appointed and sworn in manner aforesaid throughout the whole of such county, or any portion thereof, whether a hundred or hundreds, parish or parishes, or any other known division or divisions, of whatever size or denomination, and to signify, if such secretary of state shall see fit, that no person shall be excused from being so appointed and sworn in by reason of any exemption : provided always, that the person so appointed and sworn in, whether having cause of exemption or not, shall only be called upon to act for three calendar months. 1 & 2 W. 4, c. 41, s. 3.

*Refusal to be sworn or to serve.]* And if any person, being appointed a special constable as aforesaid, shall refuse to take the oath hereinbefore mentioned, when thereunto required by the justices of the peace so appointing him, or by any two of them, or by any other two justices of the peace acting for the same division or limits, he shall be liable to be convicted thereof forthwith before the said justices so requiring him, and to forfeit and pay such sum of money, not exceeding five

pounds, as to the said justices so requiring him shall seem meet. 1 & 2 W. 4, c. 41, s. 7. And if any person being appointed a special constable as aforesaid shall neglect or refuse to appear at the time and place for which he shall be summoned for the purpose of taking the said oath, he shall be liable to be convicted thereof forthwith before the justices so appointing him or any two of them, or before any other two justices of the peace acting for the same division or limits, and to forfeit and pay such sum of money not exceeding five pounds, as to the convicting justices shall seem meet, unless such person shall prove to the satisfaction of the said justices that he was prevented by sickness or such other unavoidable accident as shall in the judgment of the said justices be a sufficient excuse. *Id.*

And if any person, being appointed a special constable as aforesaid, and being called upon to serve, shall neglect or refuse to serve as such special constable, or to obey such lawful orders and directions as may be given to him for the performance of the duties of his office, every person so offending shall, on conviction thereof before any two justices of the peace, forfeit and pay for every such neglect or refusal such sum of money not exceeding five pounds as to the said justices shall seem meet, unless such person shall prove to the satisfaction of the said justices that he was prevented by sickness or such other unavoidable accident as shall in the judgment of the said justices be a sufficient excuse. 1 & 2 W. 4, c. 41, s. 8.

*Where and how they may act.]* Every special constable appointed under this Act shall, not only within the parish, township, or place for which he shall have been appointed, but also throughout the entire jurisdiction of the justices so appointing him, have, exercise, and enjoy all such powers, authorities, advantages, and immunities, and be liable to all such duties and responsibilities, as any constable duly appointed now has within his constablewick by virtue of the common law of this realm, or of any statute or statutes. 1 & 2 W. 4, c. 41, s. 5. As to the duties of constables generally, see *post*, p. 94.

And the justices of the peace who shall have appointed any special constables under this Act, or any two of them, or the justices acting for the division or limits within which such special constable shall have been called out, at a special session of such last-mentioned justices or the major part of such last-mentioned justices at such special session, shall have power to make such orders and regulations as may from time to time be necessary and expedient for rendering such special constables more efficient for the preservation of the public peace, and shall also have power to remove any such special constable from his office for any misconduct or neglect of duty therein. 1 & 2 W. 4, c. 41, s. 4.

And where any special constables appointed under this Act shall be serving within any county, and two or more justices of the peace of any adjoining county shall make it appear to the satisfaction of any two or more justices of the peace acting for the division or limits wherein such special constables are serving, that any extraordinary circumstances exist which would render it expedient that the said special constables should act in such adjoining county, then and in every such case the said last-mentioned justices are hereby authorized (if they shall think fit) to order all or any of the said special constables to act in such adjoining county in such manner as to the said last-mentioned justices shall seem meet; and every such special constable, during the time that he shall so act in such adjoining county, shall have, exercise, and enjoy all such powers, authorities, advantages, and immunities, and be liable to all such duties and responsibilities, as if he were acting within the parish, township, or place for which he was originally appointed. 1 & 2 W. 4, c. 41, s. 6.

*Service determined.]* The justices who shall have appointed any special constables under this Act are hereby empowered, —or the justices acting for the division or limits within which such special constables shall have been called out, at a special session to be held for that purpose, or the major part of such last-mentioned justices at such special session, are hereby empowered—to suspend or determine the services of any or all of the special constables so called out, as to the said justices respectively shall seem meet; and notice of such suspension or determination of the services of any or all of the said special constables shall be forthwith transmitted by such respective justices to one of Her Majesty's principal secretaries of state, and also to the lieutenant of the county. 1 & 2 W. 4, c. 41, s. 9. Special constables, once appointed, continue to have all the authority of constables until their services are actually determined by the justices under this section. *R. v. Porter et al.*, 9 Car. & P. 778.

Every special constable, within one week after the expiration of his office, or after he shall cease to hold and exercise the same pursuant to this Act, must deliver over to his successor (if any such shall have been appointed), or otherwise to such person and at such time and place as may be directed by any justice of the peace acting for the division or limits within which such special constable may have been called out, every staff, weapon, and other article which shall have been provided for such special constable under this Act; and if any special constable shall omit or refuse so to do, he shall, on conviction thereof before two justices of the peace, forfeit and pay for such offence such sum of money not exceeding

two pounds as to the convicting justices shall seem meet. 1 & 2 W. 4, c. 41, s. 10.

*Their allowance and expenses.]* The justices of the peace acting for the division or limits within which any such special constables shall have been called out to serve at a special session to be held for that purpose,—or the major part of the justices at such special session,—are empowered to order from time to time such reasonable allowances for their trouble, loss of time, and expenses, to be paid to such special constables who shall have so served or be then serving, as to the said justices or such major part of them shall seem proper; and the justices or such major part of them may also order the payment of such expenses as may have been incurred in providing staves or other necessary articles for such special constables;—and the said justices so ordering, if justices for any county, riding, or division having a separate commission of the peace, or if justices for any liberty, franchise, city, or town which shall be contributory to the public rate for any county, riding, or division, shall make every order for the payment of such allowances and expenses upon the treasurer of such county, riding, or division, who is hereby required to pay the same out of any public money which shall then be in his hands, and the said treasurer shall be allowed all such payments in his accounts;—and where the justices of the peace assembled at such special session are justices for any liberty, franchise, city, or town which is not contributory to the public rate for any county, riding or division, but which raises a rate or other similar fund in the nature of a county rate, in every such case the said last-mentioned justices shall make every order for the payment of such allowances and expenses as aforesaid upon the treasurer or other officer having the collection or disbursement of such last-mentioned rate or fund, who shall forthwith pay every such order out of such rate or fund, and shall be allowed all such payments in his accounts. 1 & 2 W. 4, c. 41, s. 13.

Or if it be made to appear to any two or more justices of the county, &c., on the oath of three or more credible witnesses, that the appointment of such special constables has been occasioned “by the behaviour, or by reasonable apprehension of the behaviour, of the persons employed upon any railway, canal, or other public work, made or carried on under the authority of Parliament, within the district or division for which such justices usually act,” the justices, at any time not exceeding one month after such appointment, may make orders from time to time upon the treasurer or other officer who shall have the control or custody of the funds of the company making the railroad, &c., for payment of such reasonable allowances

to such special constables (not exceeding 5s. a day each), for their trouble, loss of time, and expenses, as to the justices shall seem proper; a copy of which order shall be sent by the justices to one of the principal secretaries of state, and if allowed by him it shall be binding on the company, &c. 1 & 2 Vict. c. 80, s. 1. The secretary of state, however, may disallow the order altogether, or in part, in which case the expenses shall be paid or made up out of the rate for the county, &c. *Id.* s. 2. The amount ordered and allowed, two justices may cause to be levied by distress upon the goods and chattels belonging to the company. 1 & 2 Vict. c. 80, s. 3.

*Assaulting or resisting them.*] If any person shall assault or resist any constable appointed by virtue of this Act, whilst in the execution of his office, or shall promote or encourage any other person so to do, every such person shall, on conviction thereof before two justices of the peace, forfeit and pay for such offence any sum not exceeding twenty pounds, or shall be liable to such other punishment, upon conviction on any indictment or information for such offence, as any persons are by law liable to for assaulting any constable in the execution of the duties of his office. 1 & 2 W. 4, c. 41, s. 11.

*Special constables in boroughs.*] Any two or more of the justices of the peace, having jurisdiction within any borough, are hereby authorized and required, in the month of October in every year, to nominate and appoint, by precept in writing, under their hands, so many as they shall think fit of the inhabitants of such borough (not legally exempt from serving the office of constables), to act as special constables within such borough whensoever they shall be required by the warrant of any of the justices of the peace having jurisdiction within such borough so to act, and not otherwise; and every such warrant shall recite that in the opinion of the justice granting the same, the ordinary police force of the borough is insufficient at that time to maintain the peace of the borough; and every person so appointed a special constable shall take the oath set forth in stat. 1 & 2 W. 4, c. 41 (*ante*, p. 88), and shall have the powers and immunities and be liable to the duties and penalties enacted by the said last-mentioned Act; and every person so appointed a special constable shall receive, out of the borough fund, for every day during which he shall be called out to act as such, the sum of three shillings and sixpence, and no more. 5 & 6 W. 4, c. 76, s. 83. This, however, does not operate as a repeal of stat. 1 & 2 W. 4, c. 41, with respect to boroughs; but the justices of a borough may still, when it becomes necessary, appoint special constables under stat. 1 & 2 W. 4, c. 41, in the same manner as justices in counties. *R. v. Hulton*, 19 Law J. 32, *m.*



## 7. DUTIES OF CONSTABLES.

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| <p><i>As to ale-houses and beer-houses, 95.</i></p> <p><i>Apprehending offenders without warrant, 96;—in the act of committing the offence, 96, in case of riots, 98, as to hawkers, 99, and vagrants, 99;—after the offence committed, 101;—in prevention of offences, 102; on hue and cry, 103;—when and where, 103, how, 103.</i></p> <p><i>Apprehension of an offender under a warrant, 104; warrant, in what cases and how, 104; or summons and warrant, 104;—warrant, how and where executed, 105.</i></p> <p><i>Betting-houses, 106.</i></p> <p><i>Confession, 106.</i></p> <p><i>Coroner's jury, summoning, 107.</i></p> <p><i>County rate, 107.</i></p> | <p><i>Distress for rent, 108.</i></p> <p><i>Lunatics found wandering at large, 108.</i></p> <p><i>Military, 109; — billeting troops on service, 109; billeting the guards, 111; offences with respect to billeting, 111.</i></p> <p><i>Militia, 112.</i></p> <p><i>Prosecuting disorderly houses, gaming houses, &amp;c., 114.</i></p> <p><i>Search warrant, 115.</i></p> <p><i>Summons, service of, 116.</i></p> <p><i>Warrant to apprehend, on an information or complaint, 116.</i></p> <p><i>Warrant of distress upon a conviction, &amp;c., 117; how executed, 117; in what cases backed, 117; how returned, 118.</i></p> <p><i>Warrant of commitment on a conviction or order, 118.</i></p> |
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By stat. 5 & 6 Vict. c. 109 (under which petty constables are appointed, as mentioned *ante*, p. 51), it is enacted by sect. 15, that the said constables shall have within the whole county, and also within all liberties and franchises, and detached parts of other counties situated therein, and also in every county adjoining to the county in which they are appointed, all the powers, privileges, and immunities, and shall be liable to all the duties and responsibilities, of a constable, within his constablewick, but shall not be bound to act as a constable beyond the parish for which they are severally appointed and sworn, without the special warrant of a justice of the peace; provided that in those counties in which any chief constable or superintendent shall have been appointed under the authority of the 3 & 4 Vict. c. 88, the constables appointed under 5 & 6 Vict. c. 109, for any parish within the district for which such chief constable or superintendent shall have been appointed, shall be subject to the authority of such chief constable or superintendent. 5 & 6 Vict. c. 109, s. 15.

*Their Duties.**As to Ale-houses and Beer-houses.*

By stat. 9 G. 4, c. 61, s. 2, after providing that a petty session shall be holden in each division, for appointing a day and place for holding the annual licensing meeting, it is enacted that the justices shall direct a precept to the high constable of the division or place for which such meeting is to be holden, requiring him, within five days next ensuing that on which he shall have received such precept, to order the several petty constables or other peace officers within his constablewick to affix or cause to be affixed on the door of the church or chapel, and where there shall be no church or chapel, on some other public and conspicuous place within their respective districts, a notice of the day, hour, and place at which such meeting is appointed to be holden, and to give to or to leave at the dwelling-house of each and every justice acting for such division or place, and of each and every person keeping an inn, or who shall have given notice of his intention to keep an inn, and to apply for a licence to sell exciseable liquors by retail, to be drunk or consumed on the premises, within their respective districts, a copy of such notice. 9 G. 4, c. 61, s. 2.

And by stat 4 & 5 W. 4, c. 85, s. 7, all constables and officers of police are authorized and empowered to enter into all houses which are or shall be licensed to sell beer or spirituous liquors, to be consumed upon the premises, when and so often as such constables and officers shall think proper; and if any person having such licence as aforesaid, or any servant or other person in his employ or by his directions, shall refuse to admit or shall not admit such constable or officer of police into such house or upon such premises, such person having such licence shall for the first offence forfeit and pay any sum not exceeding 5*l.*, together with the costs of the conviction, to be recovered within twenty days next after that on which such offence was committed, before one or more justices of the peace; and it shall be lawful for any two or more justices, before whom any such person shall be convicted of such offence for the second time, to adjudge (if they shall so think fit) that such offender shall be disqualified from selling beer, ale, porter, cider, or perry by retail for the space of two years next after such conviction, or for such shorter space of time as they may think proper. 4 & 5 W. 4, c. 85, s. 7.

Where the keeper of an inn, ale-house or victualling-house, and duly licensed to sell exciseable liquors by retail, has already been convicted of two offences against his licence, and is charged with having subsequently committed a third offence against it,—it is provided by stat. 9 G. 4, c. 61, s. 22,

s. 11, reciting that doubts had been entertained as to the authority to apprehend persons found committing indictable offences in the night, it is enacted, that it shall be lawful for any person whatsoever to apprehend any person who shall be found committing any indictable offence by night, and to convey him, or to deliver him to some constable or peace officer, in order to his being conveyed, as soon as conveniently may be, before a justice of the peace, to be dealt with according to law. Night here means the same as in burglary (*Id.* s. 13); namely, it commences at nine o'clock in the evening, and ends at six in the morning. 1 Viet. c. 86, s. 4.

*In case of riots.]* A constable, or even private person, may lawfully endeavour to prevent those whom he sees engaged in a riot or rout, from executing their purpose, and he may stop those whom he shall see coming to join them (1 *Hawk.* c. 65, s. 11), and may arrest those he sees engaged in it. And for this purpose, he may lawfully arm himself, and make use of his arms in suppressing the riot.

And what may thus be done by a constable or private person, may also be done by the military, even although they be not at the time acting under the orders of a justice of the peace. But they must be cautious not to use their arms in such a case, where there is no actual necessity, except indeed in their own defence in case they should be attacked.

Constables and other peace officers also, not only may do, but it is one of the duties of their office to do, all that in them lies, for the suppressing of the riot [and the arrest of the rioters]; and they may command all other persons to assist them in doing so. 1 *Hawk.* c. 65, s. 11.

As to rioters remaining together after the Riot Act, or rather proclamation to disperse, has been read, and which is made a felony by statute 1 G. 1, st. 2, c. 5, s. 1, it is enacted, by sect. 8 of that statute, that if such persons, so unlawfully, riotously, and tumultuously assembled, or twelve or more of them, after proclamation made in manner aforesaid, shall continue together and not disperse themselves within one hour, then it shall and may be lawful to and for every justice of the peace, sheriff, or under-sheriff of the county where such assembly shall be,—and also to and for every high and petty constable and other peace officer within such county,—and also to and for every mayor, justice of the peace, sheriff, bailiff, and other head officer, high or petty constable and other peace officer of any city or town corporate, where such assembly shall be,—and to and for such other person and persons as shall be commanded to be assisting unto any such justice of the peace, sheriff, &c. (who are hereby authorized and empowered to command all His Majesty's subjects of age and ability to be assisting to them therein), to seize and appre-

hend, and they are hereby required to seize and apprehend, such persons so unlawfully, riotously, and tumultuously continuing together after proclamation made as aforesaid, and forthwith to carry the persons so apprehended before one or more of His Majesty's justices of the peace of the county or place where such person shall be so apprehended, in order to their being proceeded against for such their offences according to law. 1 G. 1, st. 2, c. 5, s. 8.

*As to hawkers.*] By stat. 50 G. 3, c. 4, s. 20, any person whatsoever may seize and detain any hawker, pedlar, petty chapman, or other trading person as aforesaid (who shall be found trading without a licence, contrary to the Act, or who being found trading shall refuse or neglect to produce to such person a licence according to the Act, after being required so to do), for a reasonable time, in order to give notice to a constable, headborough, tithingman, or other peace officer or officers, who are required to carry such person so seized (unless he shall in the meantime produce his licence), before some justice of the county or place where the offence shall be committed; which said justice of the peace is authorized and strictly required to examine into the fact or facts charged; and upon the proof, either by the confession of the party offending, or by the oath of one or more credible witness or witnesses, that the person so brought before him had so traded as aforesaid, and no such licence being produced by such offender before the said justice, to convict the offender so trading without a licence.

And if any constable, headborough, tithingman, or other officer or officers of the peace, shall refuse or neglect, upon due notice, or on his or their own view, to be aiding and assisting in the execution of the Act, being thereunto required, each and every such officer or officers, being thereof convicted, upon his confession, or by the oath of one or more credible witness or witnesses before any justice for the county or place where the offence shall be committed, shall forfeit for each and every such offence the sum of 10*l.*, to be recovered and applied as hereinafter mentioned. *Id.* s. 21.

*As to vagrants.*] By stat. 5 G. 4, c. 83, s. 6, any person whatsoever may apprehend a person who shall be found offending against the Act, and forthwith take and convey him or her before some justice, or deliver him or her to any constable or other peace officer of the place where he or she shall have been apprehended, to be so taken and conveyed; and in case any constable or other peace officer shall refuse or wilfully neglect to take such offender into his custody, and to take and convey him or her before some justice, or shall not use his best endeavours to apprehend and convey before some

justice, any person that he shall find offending against the Act, it shall be deemed a neglect of duty in such constable or other peace officer, and he shall, on conviction, be punished in manner as is after stated.

And any justice, upon oath being made before him that any person hath committed, or is suspected to have committed, any offence against the Act, may issue his warrant to apprehend and bring before him or some other justice of the peace the person so charged. *Id.* s. 7.

So any justice of the peace, upon information on oath before him made that any person described to be an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, is or is reasonably suspected to be harboured or concealed in any house kept or purporting to be kept for the reception, lodging, or entertainment of travellers, may, by warrant under his hand and seal, authorize any constable or other person or persons to enter at any time into such house, and to apprehend and bring before him or any other justice every such idle and disorderly person, rogue and vagabond, and incorrigible rogue as shall be found therein. *Id.* s. 13.

And any constable, peace officer, or other person apprehending any person charged with being an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, may take any horse, mule, ass, cart, car, caravan, or other vehicle, or goods in the possession or use of such person, and convey the same as well as such person before some justice of the peace : and every justice by whom any person shall be adjudged to be an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, may order that such offender shall be searched, and that his or her trunks, boxes, bundles, parcels or packages shall be inspected in the presence of the justice, and of him or her, and also that any cart, car, caravan, or other vehicle which may have been found in his or her possession or use, shall be searched in his or her presence ; and the justice may order that any money which may be then found with or upon such offender, shall be paid and applied for and towards the expense of apprehending, conveying to the house of correction, and maintaining such offender during the time for which he or she shall have been committed ; and if upon such search, money sufficient for the purposes aforesaid be not found, it shall be lawful for such justice to order that a part, or, if necessary, the whole of such other effects then found, shall be sold, and that the produce of such sale shall be paid and applied as aforesaid, and also that the overplus of such money or effects, after deducting the charges of such sale, shall be returned to the said offender. *Id.* s. 8.

And in case any constable or other peace officer shall neglect his duty in anything required of him by this Act, or in case

any person shall disturb or hinder any constable or other peace officer in the execution of this Act, or shall be aiding, abetting, or assisting therein, and shall be thereof convicted upon the oath of one or more credible witness or witnesses before one or more justice or justices of the peace where such offence shall be committed, every such offender shall for every such offence forfeit any sum not exceeding five pounds ;—and in case such offender shall not forthwith pay such sum so forfeited, the same shall be levied by distress and sale of the offender's goods, by warrant from such justice or justices: and if sufficient distress cannot be found, one or more such justice or justices may commit the person so offending to the house of correction, there to be kept for any time not exceeding three calendar months, or until such fine be paid ; and the said justice or justices shall cause the said fine, when paid, to be forthwith delivered to the treasurer of the county, riding, division or place where such offence shall have been committed, to be by him added to and used as part of the stock of the said county, riding, division, or place. *Id.* s. 11.

And in case any constable or other peace officer shall be convicted before any one or more justice or justices of the peace for any neglect of any duty required of him by this Act, or of any disobedience of any lawful warrant or order of any justice or justices issued under the provisions of the Act, and in case any two or more justices shall impose any fine, or direct any penalty to be paid by such officer, under any powers enabling such justices in that behalf, then and in every such case it shall be lawful for such justice or justices, upon conviction of any such offender, to reimburse and allow to the person or persons on whose complaint or information such offender shall have been convicted, all necessary costs and expenses which such person or persons may thereby have incurred, or by any appeal made in consequence thereof, by making an order under his or their hands and seals, upon the treasurer of the county, riding, division, or place, to pay to such person or persons the amount of such costs and expenses, on producing the said order and giving a receipt for the same, and the same shall be allowed the said treasurer in his account. *Id.* s. 12.

*After offence committed.]* If a reasonable charge of felony against a person be made to a constable, the constable will be justified in arresting him without warrant, although it afterwards turn out that the person was perfectly innocent, or that no felony in fact had been committed. But it has been holden that a constable is not justified in apprehending a person as a receiver of stolen goods, on the mere assertion of the principal felon. *Isuacs v. Brand*, 2 Stark, 167. Nor is a constable justified in taking a person into custody for a mere assault,

without a warrant, unless he himself was present at the time the assault was committed (*Coupey v. Henley*, 2 Esp. 540), or there be a reasonable ground for apprehending a continuance or renewal of it. *Baynes v. Brewster*, 11 Law J. 5, m. And where a police constable, being assaulted by a man, went away, and returned in about two hours with assistance, and arrested the man who assaulted him : it was holden that the constable was not justified in arresting him, after that interval, without a warrant. *R. v. Walker*, 23 Law. J., 123 m. ; and the same as to all breaches of peace out of his view. 2 *Hawk.* c. 13, s. 8. *Id.* c. 12, s. 20.

Or if a constable have a reasonable suspicion that a man has committed felony, he may apprehend him. So may a private individual. The difference between the authority of the constable and the private person in this respect is, that the latter is justified only in case it turn out that a felony was in fact committed, but the constable may justify the arrest and detention, whether in fact a felony was committed or not. *Beckwith v. Philby*, *supra*, per Lord Tenterden, C. J. And the ordinary grounds of justifiable suspicion are thus enumerated by Hawkins :—First, the common fame of the country ; second, living a vagrant, idle, disorderly life, without any visible means to support it ; third, being in company with known offenders at the time the offence was committed, or at other times ; fourth, being found under circumstances inducing a strong presumption of guilt, as, for instance, having stolen goods in his possession, and not being able to give an account of his having come honestly by them, or the like ; fifth, behaving in such a way as to betray a consciousness of guilt, as by making no answer when charged with the offence, or absconding, or the like. 2 *Hawk.* c. 12, ss. 9–14.

*In prevention of offences.*] If a constable, or even a private person, see another on the point of committing treason or felony, or doing an act which would manifestly endanger the life of another, he may lay hold on him and detain him until it may be presumed that he has changed his purpose. 2 *Hawk.* c. 12, s. 19. And by stat. 8 & 9 Vict. c. 25, relating to the destroying or damaging of houses with gunpowder or other explosive substances, or burning, disabling, or disfiguring persons with the like, it is enacted by sect. 13, that it shall be lawful for any constable or peace officer, to take into custody, without warrant, any person whom he shall find lying or loitering in any highway, yard, or other place, during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony under this Act, and to detain such person until he can be brought before a justice of the peace to be dealt with according to law.

There is one peculiarity in the constable's interference,

namely, that he may demand the assistance of any person present to enable him to execute his duty (2 *Hawk.* c. 13, s. 7, and see *R. v. Phelps et al.*, Car. & M. 180); and if such person refuse his assistance, he may be indicted and punished as for a misdemeanor at common law. See *R. v. Brown*, Car. & M. 314.

*On hue and cry.*] Upon hue and cry raised or levied, a private person may arrest the alleged offender (2 *Hawk.* c. 12, s. 14), although no other circumstance of suspicion attach to him. 2 *Inst.* 52. Hue and cry was the ancient mode of pursuing an offender from town to town until he was taken. 2 *Hawk.* c. 12, s. 5. It might be raised by any person present when a felony was committed, or dangerous wound given, by going to the constable of the next town, informing him of it, describing the offender, and stating which way he had gone. *Id.* ss. 4, 5. It was the duty of the constable then immediately to raise his own town, and search for the offender, and, upon not finding him, to send the like notice to the constables of all the neighbouring towns, who ought in like manner to search for the offender, and also to give notice to their neighbouring constables, and they to the next, until the offender was taken. *Id.* s. 6. Sometimes there was a justice's warrant for levying the hue and cry; but the constable might levy it without warrant. If a constable fail to levy a hue and cry when he ought, or if others do not pursue it when required, they are punishable upon indictment with fine or imprisonment, or both. 3 *Inst.* 117. 3 *Ed.* 1, c. 9.

*When and where.*] An arrest without warrant may be made at any time, even on a Sunday. And it may be made any where.

*How.*] An arrest is usually made by laying hands on the party and detaining him. But if the officer or other person say to him "I arrest you," and the party acquiesce and go with him, this will be a good arrest (see *Russen v. Lucas*, 1 Car. & P. 153); although it would be otherwise, if, instead of submitting, he had escaped. *Id.* If the arrest be by a constable, it is sufficient for him to state merely that he arrests the party in the Queen's name (1 *Hale*, 589); but a private person, it should seem, if required, must state to the party arrested the cause of the arrest.

If the party to be arrested be in a house, and the doors be fastened, then, according to Hawkins, the doors may be broken open to arrest him (after first demanding admittance and being refused), in the following cases:—First, upon a *capias* on an indictment; second, where one, known to have committed treason or felony, or to have given another a dan-



gerous wound, is pursued by a constable or private person, with or without warrant; third, where an affray is made in a house, in the view or hearing of a constable, or where affrayers fly to a house and are immediately pursued by a constable; fourth, where a person, lawfully arrested, escapes and flies to a house: in these several cases the door of the house may be broken open, to arrest the party or suppress the affray, if upon demand made for the purpose the parties within refuse to open it. 2 *Hawk.* c. 14, ss. 1-9. And the same upon a warrant on a charge or suspicion of felony. 2 *Hale*, 117. So, where a private person, without warrant, broke open the door of a house, and imprisoned the occupier, to prevent him from murdering his wife, he was holden to be justified. *Handcock v. Baker*, 2 Bos. & P. 260. And it is immaterial whether it be the party's own house, or the house of a stranger, except that in the latter case the officer is justified only in case the party he seeks be actually in the house at the time. 2 *Hale*, 117.

*Apprehension of an Offender under a Warrant.*

*Warrant, in what cases and how.]* Where a charge or complaint is made before a justice of the peace, that a person who has committed, or is suspected to have committed, any treason, felony, or indictable misdemeanor, or any other indictable offence whatsoever, either within the justice's jurisdiction or elsewhere, is residing or being, or is suspected to reside or be within the limits of such jurisdiction,—the justice may at once issue his warrant to apprehend such person, and to cause him to be brought before him or some other justice for the same county, riding, division, liberty, city, borough, or place, to answer to the charge. 11 & 12 Vict. c. 42, s. 1. This warrant may be issued on a Sunday, as well as any other day. *Id.* s. 4. It must be under the hand and seal of the justice issuing it; and it may be directed—either to a constable or other person by name,—or generally to the constable of the parish or other district within which it is to be executed, without naming him,—or to such constable and all other constables or peace officers in the county or other district within which the justice issuing the warrant has jurisdiction,—or generally to all constables or peace officers within such county or district. *Id.* s. 10.

*Or summons and warrant.]* The justice, however, instead of issuing a warrant in the first instance, may, if he think fit, issue a summons; and if that be disobeyed, he may then issue his warrant. 11 & 12 Vict. c. 42, ss. 1, 9. In the case of a

summons, it is not necessary that the information should be upon oath ; it need not even be in writing. *Id.* s. 8.

This summons is directed to the party himself, who is charged by the information. It must be served by a constable or other peace officer, either by delivering it to the party personally, or, if he cannot be conveniently met with, by leaving it with some person for him at his last or most usual place of abode. 11 & 12 Vict. c. 42, s. 9.

If the party fail to attend at the time and place mentioned in the summons, then, upon oath made of the service of the summons, the justice may issue his warrant (11 & 12 Vict. c. 42, s. 9); or if he see any necessity for it, as if he be informed that the party is likely to abscond, or the like, he may issue his warrant before the day of attendance mentioned in the summons. *Id.* s. 1.

*Warrant, how and where executed.]* The arrest, as we have already seen, is usually made by actually laying hands on the party and detaining him. But if the officer or other person say to him "I arrest you," and the party acquiesce and go with him, this will be a good arrest (see *Russen v. Lucas*, 1 Car. & P. 153); although it would be otherwise, if, instead of submitting, he had escaped (*Id.*); and merely showing him the warrant, and his then voluntarily accompanying the officer to a magistrate, would not be in law an arrest. *Arrowsmith v. Le Mesurier*, 2 New. Rep. 211. If the party arrested demand to see the warrant, the constable, if he be a known officer, and acting within his precinct, is not in strictness bound to show it to him; but otherwise, where the arrest is by a constable out of his precinct, or by a private person (2 *Hawk.* c. 13, s. 28); and where the arrest is without warrant, it is sufficient for a constable to state merely that he arrests the party in the Queen's name (1 *Hale*, 589); but a private person, if required, must, it should seem, state to the party the cause of the arrest. As to breaking open doors, for the purpose of making an arrest, see *ante*, p. 103; and as to the death of or injury to either party,—the party arresting or arrested,—in the endeavour to make or avoid the arrest, see *ante*, pp. 61, 62.

If the person against whom the warrant has issued, be not found within the jurisdiction of the justice who issued it, or if he shall escape, go into, reside, or be, or be supposed or suspected to be in any place in England or Wales, the constable, on taking the warrant to any justice of the peace there, and making oath as to the handwriting of the justices to the warrant, the justice to whom he shall present it will back the warrant, that is, he will indorse on it an authority for the constable and all other peace officers to execute the warrant within his jurisdiction. 11 & 12 Vict. c. 42, s. 11.

In like manner, English warrants may be backed in Ireland, 11 & 12 Vict. c. 42, s. 12, or Scotland, *Id.* s. 14, or the Isle of Man, *Id.* s. 13, or in the Islands of Guernsey, Jersey, Alderney, or Sark. *Id.* s. 13; and 14 & 15 Vict. c. 55, s. 18.

In the case of a search warrant, the warrant, after directing the constable to search for the goods in the dwelling-house, &c., of A. B., orders him that if the same or any part thereof, be found upon such search, to bring the goods so found, as also the body of the said A. B., before the justice issuing the warrant, or some other justice or justices of the peace for the county, to be disposed of and dealt with according to law.

When the party is arrested, the constable should take him before a justice of the peace, as soon as it is possible for him to do so (see *Wright v. Court*, 4 B. & C. 596), and in the meantime he should keep or lodge him in safe custody. 2 *Hale*, 120. And the same, where the arrest is by a private person under a warrant. But if the arrest be by a private person without warrant, he may deliver the party to a constable, or he may take him before a justice of the peace. 1 *Hale*, 589. And the party arrested should not be treated with any unnecessary harshness, beyond what is actually necessary for his safe custody; and therefore it has been holden, that a constable has no right to handcuff a person whom he has apprehended on a suspicion of felony, unless he have attempted to escape, or it be necessary to prevent him from escaping. *Wright v. Court*, *supra*.

### *Betting houses.*

Any justice of the peace, upon complaint made before him upon oath, that there is reason to suspect any house, office, room, or place to be kept or used as a betting-house or office, may give authority by special warrant, under his hand, when in his discretion he shall think fit, to any constable or police officer to enter, with such assistance as may be found necessary, into such house, &c., and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to arrest, search and bring before a justice of the peace, all such persons found therein, and to seize all lists, cards or other documents relating to racing or betting found in such house or premises. 16 & 17 Vict. c. 119, s. 11.

### *Confession.*

A constable may receive a confession or admission of guilt from any person who will voluntarily make it, whether such person at the time be charged with the offence confessed or not. But he must take care not to obtain such confession or

admission by any promise of favour or threat, or by any statement from which such promise or threat can be inferred ; for if so, it cannot afterwards be given in evidence against the party. As for instance, saying to him that he had better tell all he knew,—or that he had better tell where he got the property,—or “ I will forgive you if you tell the truth,”—“ You had better split, and not suffer for all of them,”—“ it is of no use for you to deny it, for there are the man and boy who will swear that they saw you do it,”—“ it would have been better if you had told at first,”—“ that unfortunate watch has been found, and if you do not tell me who your partner was, I will commit you to prison as soon as we get to Newcastle : ”—these have severally been holden to be such threats or promises as prevented the confessions made thereupon from being given in evidence. And the same, where the promise or threat is made by another person, in the presence and hearing of a constable. *R. v. Laughner*, 2 Car. & K. 225. When a person indicates to a constable that he is about to confess, it is usual for the constable, before any disclosure is made, to apprise him that it will be his duty to communicate to the magistrate anything he may disclose to him ; but this, although usual, is not necessary, and a confession by a person who is not thus cautioned, made to a constable or any other person, may afterwards be given in evidence against the party making it, provided it be voluntary, and not obtained by any threat or promise of favour as above mentioned ; it is only on examination before a magistrate that such a caution is necessary.

#### *Coroner's Jury, Summoning.*

Before an inquest is holden on a dead body, the coroner issues his precept to the constable of the hundred or place where it was found, requiring him to summon “ twenty-four good and lawful men of the four next townships ” to appear before him at a time and place mentioned, for the purpose of inquiring as to the death ; and requiring him to be then and there present, to certify what he shall have done in the premises, and further to do and execute what shall be then and there enjoined him. Although the precept requires the constable to summon jurors of “ the four next townships,” in practice he summons only householders in the immediate neighbourhood of the place where the inquest is to be holden ; and he attends himself, and usually acts as an officer of the court.

#### *County Rate.*

When so directed by an order in writing, signed by the clerk of any committee of justices, appointed for preparing a

basis for assessment of the parish or place to the county rate, the constable must make returns in writing to the committee, at such times and places as they may appoint, of the amount of the full and fair value of the whole or any part of the property within the parish or place liable to be assessed toward the county rate, together with other particulars (15 & 16 Vict. c. 81, s. 5), failing in which, or to appear when required so to do before the committee of justices, or to be sworn or examined, he will be liable to a penalty of 20*l*.

*Distress for Rent.*

Before goods, distrained for rent, are sold, they must be appraised by two sworn appraisers, and an oath must be administered to them by the constable of the "hundred, parish, or place" where the distress was taken; the constable of an adjoining parish will not be sufficient, even although the constable of the proper parish cannot at the time be found. *Avenell v. Croker*, Moody & M. 172. The following is the form of the oath:—"You and each of you shall truly appraise the several goods and chattels mentioned in this inventory according to the best of your understanding. So help you God. The constable then writes a memorandum of this on the back of the inventory, in this form:—"Memorandum, that on the — day of —, in the year of our Lord —, C. D., of — and E. F., of —, two sworn appraisers, were sworn upon the Holy Evangelists, by me, G. H., constable of the parish of —, truly to appraise the goods and chattels mentioned in this inventory, according to the best of their understandings; as witness my hand, G. H., constable." Which memorandum is then attested by a witness present at the time, in this form:—"Present at the time of swearing the said C. D. and E. F. as above and witness thereto," J. K.

*Lunatics found Wandering at large.*

Every constable of any parish or place, and every relieving officer and overseer of any parish, who shall have knowledge that any person wandering at large within such parish or place (whether or not such person be a pauper) is deemed to be a lunatic, shall immediately apprehend and take, or cause such person to be apprehended and taken before a justice, under a penalty of 10*l*. 16 & 17 Vict. c. 97, ss. 68, 70. Or on its being made to appear to any justice, by the information, upon oath, of any person whomsoever, that any person wandering at large, within the limits of his jurisdiction, is deemed to be a lunatic, such justice may, by an order under his hand and seal, require any constable of the parish or place or relieving

officer or overseer of the parish where such person may be found, to apprehend him and bring him before such justice, or some other justice having jurisdiction where such person may be found. *Id.* s. 68. And so, every constable in any parish or place, and every relieving officer, &c. who shall have knowledge that any person in such parish or place, not a pauper and not wandering at large, is deemed to be a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, shall, within three days after obtaining such knowledge, give information thereof upon oath to a justice under the penalty of 10*l.* *Id.* ss. 68, 70. The justice will thereupon cause the lunatic to be visited, either by going himself or by sending a medical man for the purpose; and if it shall appear that the facts are as alleged, he will then, by an order under his hand and seal, require the constable, &c. to bring the lunatic before any two justices of the same county or borough; and if such justices be satisfied upon the point, they will make an order that he be received into a lunatic asylum or licensed house for the reception of lunatics. The constable, &c. who may have brought the lunatic before the justice or justices, or any constable whom the justices may require to do so, must then forthwith convey such person to such asylum as may be named in the order of justices. *Id.* s. 68.

*Military.*

*Billeting troops on service.*] By the annual Mutiny Act, all constables of parishes and places, and other persons specified in this Act, are required to billet the officers and soldiers in Her Majesty's service, and persons receiving pay in Her Majesty's army, and the horses belonging to Her Majesty's cavalry, and also all staff and field officers' horses and all bat and baggage horses belonging to any of Her Majesty's other forces, when on actual service, not exceeding for each officer the number for which forage is or shall be allowed by Her Majesty's regulations, in victualling houses and other houses specified in this Act [and in beer houses licensed to sell beer to be drunk upon the premises, 4 & 5 Will. 4, c. 85, s. 5], and they shall be received by the occupiers of such houses in which they are billeted, and furnished by such victuallers with proper accommodation in such houses, or if any victualler shall not have sufficient accommodation in the house upon which a soldier is billeted, then in some good and sufficient quarters to be provided by such victualler in the immediate neighbourhood, and with diet and small beer, and with stables, hay, and straw for such horses as aforesaid, paying and allowing for the same the several rates hereafter mentioned; at no time

when troops are on a march shall any of them, whether infantry or cavalry, be billeted above one mile from the place mentioned in the route ; in all places where cavalry shall be billeted, the men and their horses shall be billeted in one and the same house, except in case of necessity ; in no other case whatsoever shall there be less than one man billeted where there shall be one or two horses, nor less than two men where there shall be four horses, and so in proportion for a greater number ; in no case shall a man and his horse be billeted at a greater distance from each other than one hundred yards ; the constables are required to billet all soldiers and their horses, on their march, in a just and equal proportion, upon the keepers of all houses within one mile of the place mentioned in the route, although some of such houses may be in the adjoining county, but no constable is authorized to billet soldiers out of the county to which he belongs, when the constable of the adjoining county shall be present, and undertake to billet the due proportion of men in his county ; no more billets shall at any time be ordered than there are effective soldiers and horses present to be billeted ; all billets, when made out, shall be delivered into the hands of the commanding officer present ; if any person shall find himself aggrieved by having an undue proportion of soldiers billeted in his house, and shall prefer his complaint, if against a constable or other person not being a justice, to one or more justices, and if against a justice, then to two or more justices, within whose jurisdiction such soldiers are billeted, such justices shall have power to order such of the soldiers to be removed, and to be billeted upon other persons, as they shall see cause ; and when any of Her Majesty's cavalry or any horses shall be billeted upon the occupiers of houses in which officers or soldiers may be quartered, who shall have no stables, then and in such case, upon the written requisition of the commanding officer of the regiment, troop, or detachment, the constable is required to billet the men and their horses, or horses only, upon some other person or persons who have stables, and are liable to have officers and soldiers billeted upon them ; upon complaint being made by the person or persons to whose house or stables the men and horses shall have been so removed, to two or more justices within whose jurisdiction such men or horses shall be so billeted, such justices may order a proper allowance to be paid by the person relieved to the person receiving such men and horses, or to be applied in furnishing the requisite accommodation ;—the commanding officers may exchange any man or horse billeted in any place with another man or horse billeted in the same place, for the benefit of the service, provided the number of men and horses do not exceed the number at that time billeted on such houses ; the constables are required to billet such men and horses so exchanged accord-

ingly;—any justice, at the request of any officer or non-commissioned officer commanding any soldiers requiring billets, may extend any routes or enlarge the districts within which billets shall be required, in such manner as shall appear to be most convenient to the troops;—provided that, to prevent or punish all abuses in billeting soldiers, any justice within his jurisdiction, by warrant or order under his hand, may require any constable to give him an account in writing of the number of officers and soldiers who shall be quartered by him, together with the names of the persons upon whom they are billeted, stating the street or place where such persons dwell, and the sign, if any, belonging to those houses.

*Billeting the guards.*] The officers and soldiers of Her Majesty's foot guards shall be billeted within the city and liberties of Westminster, and places adjacent, lying in the county of Middlesex (except the city of London) and in the county of Surrey, and in the borough of Southwark, in the same manner and under the same regulations as in other parts of England, in all cases for which particular provision is not made by this Act; and the high constable shall, on receipt of the order for billeting soldiers, deliver precepts to the several constables within their respective divisions, in pursuance of which the said constables shall billet such officers and soldiers equally and proportionably on the houses subjected thereto by this Act; and the said constables shall at every general sessions of the peace, to be holden for the said city and liberties, counties and boroughs respectively, make and deliver to the justices then in open session assembled, upon oath, lists, signed by them respectively, of the houses subject by this Act to receive officers and soldiers, together with the names and rank of all officers and soldiers billeted on each respectively. *Mutiny Act, s. 53.*

*Offences with respect to billeting.*] If any constable or other person, who shall be employed in billeting any officers or soldiers, shall billet any such officer or soldier in any house not within the meaning of the Act, without the consent of the owner or occupier thereof;—or shall neglect or refuse to billet any officer or soldier on duty, when thereunto required, provided sufficient notice be given before the arrival of such troops;—or shall receive, demand, or agree for any money or reward whatsoever, in order to excuse any person from receiving such officer or soldier;—or shall quarter any of the wives, children, men or maid servants of any officers or soldiers in any such houses, against the consent of the occupiers;—or shall neglect or refuse to execute such warrants of the justices as shall be directed to him for providing carriages, horses, or vessels, or shall demand more than the legal rates for the



same ; or if any person appointed by such constable to provide carriages, horses, or vessels, shall do any act or thing by which the execution of such warrants shall be hindered ; or if any constable shall neglect to deliver in to the justices at quarter sessions lists of officers and soldiers of the foot guards quartered according to the provisions of this Act, or shall cause to be delivered defective lists of the same ;—or if any person liable by this Act to have any officer or soldier quartered upon him, shall refuse to receive and to afford proper accommodation or diet in the house in which such officer or soldier is quartered, and to furnish the several things directed to be furnished to officers and soldiers, or shall neglect or refuse to furnish good and sufficient stables, together with good and sufficient hay and straw, for each horse, at the rate established by this Act, and in such quantities as shall be fixed by Her Majesty's regulations, not exceeding eighteen pounds of hay and six pounds of straw per diem for each horse ;—or if any innkeeper or victualler, not having good and sufficient stables, shall refuse to pay over to the person or persons who may provide stabling, such allowance by way of compensation as shall be directed by any justice of the peace, or shall pay any sum or sums of money to any soldier on the march in lieu of furnishing in kind the diet and small beer to which such soldier is entitled :—such constable, victualler, or other person respectively shall forfeit for every such offence, neglect, or refusal, any sum not exceeding five pounds nor less than forty shillings.

*Militia.*

If it become necessary to ballot for the militia, the constable, tithingman, &c., shall, within fourteen days after any return of men liable to serve is required, give or leave notice in writing, in the form prescribed by the Act, to or for every occupier of every dwelling-house where any person shall reside, within the limits of the place for which they act as such constables, &c. at his or her dwelling-house, or where such dwelling-house shall be divided into different stories or apartments, and occupied distinctly by several persons, then to or for the occupier of each distinct story or apartment, to prepare or produce, within fourteen days next ensuing the day of giving such notice, a list in writing, to the best of his or her belief, of the Christian and surname of each and every man residing in such dwelling-house, and between the ages of 18 and 35, (15 & 16 Vict. c. 50, s. 20) ; distinguishing every person in such dwelling-house, and of such age as aforesaid, claiming to be exempt from serving in the militia, together with the ground of any such claim ; and every such notice shall mention the day, time, and place appointed for hearing appeals by persons

claiming to be exempt from serving in the militia; and any such occupier shall make out such list, and sign the same, or cause the same to be delivered to such constable, &c. on pain of forfeiting 5*l*. 42 G. 3, c. 90, s. 26. In case the notice shall be served upon an occupier being one of the persons calling themselves Quakers, such occupier shall within seven days thereafter produce to the constable, &c. a certificate under the hands of two or more respectable housekeepers being of the people called Quakers, acknowledging such person to be one of their persuasion, and thereupon the constables, &c. are to make returns of the persons liable to serve in the militia, resident in the houses, &c. of such occupiers so certified to be of the people called Quakers in the same manner as is directed in cases where returns are not to be made to such notices. *Id.* s. 27. Within one month after having delivered these notices, the constables, &c. are to make out in every year a fair and true list in writing, according to the form given in the Act, of the names of all the men usually and at that time dwelling within the parish, &c. for which they act, between the aforesaid ages, as well as of those who have not made any return, or been returned in pursuance of the aforesaid notices, as of those who have made such returns, or been returned in pursuance thereof, distinguishing their respective ranks and occupations, and those who have made returns for those who have neglected so to do (and where the true names of such persons cannot be procured, the common appellation of such person shall be sufficient), and distinguishing which of the persons so returned labour under any infirmity likely to incapacitate them from serving as militia men (where any person is incapacitated from serving in the militia by reason of any infirmity, it shall be sufficient in any return or list for the purposes of the militia to state that such person is infirm, without describing or otherwise specifying the nature of his infirmity, 15 & 16 Vict. c. 50, s. 23,) and which of them claim to be exempt from serving in the militia, and on what account, and shall affix a true copy of every list on the door of the church or chapel belonging to every parish, &c. or (if any shall have no church or chapel belonging thereto) on the door of the church or chapel of some parish or place thereto adjoining (and shall affix a like copy and notice on the door, or the outer wall near the door, of every church and public chapel in such parish, &c. including places of public worship which do not belong to the established church, 15 & 16 Vict. c. 50, s. 22), some one Sunday morning before they shall make the return to the deputy-lieutenant (and the Sunday on which every such copy and notice shall be affixed as aforesaid, shall be fourteen days at the least before the day appointed for the meeting for hearing appeals, 15 & 16 Vict. c. 50, s. 22), and also notice in writing at the bottom of the said copy of

such list of the day and hour, and place of meeting for hearing appeals, and that all persons who shall think themselves aggrieved, may then appeal, and that no appeal will be afterwards received; and shall afterwards make a return of such list as aforesaid, or a true and exact copy thereof to the deputy-lieutenants of the sub-division. 42 G. 3, c. 90, s. 28. On the days and at the places appointed for the returns of the lists, the constables, &c. must attend and verify their returns upon oath. *Id.* s. 30. And the deputy-lieutenants, or any two or more of them, may issue their order or warrant under their hands and seal, requiring the attendance of the constable, &c. at such time and place as shall be expressed in the warrant. *Id.* s. 32. If any such constable, &c. refuse or neglect to appear according to such order, or to return the aforesaid list, or to comply with such orders and directions as he shall from time to time receive from the deputy-lieutenants, or shall in making the return be guilty of any fraud or wilful partiality or gross neglect in his duty, he may be committed to the common gaol for one month, or be fined in any sum not exceeding 20*l.* or less than 40*s.* *Id.*

Balloting for the militia, however, and the making out of lists, is now suspended. 18 & 19 Vict. c. 106.

#### *Prosecuting Disorderly Houses, Gaming Houses, &c.*

By stat. 25 G. 2, c. 36, s. 5, in order to encourage prosecutions against persons keeping bawdy-houses, gaming-houses, or other disorderly houses, it is enacted that if any two inhabitants of any parish or place, paying scot or bearing lot therein, give notice to any constable (or other peace officer of the like nature, where there is no constable) of such parish or place of any person keeping a bawdy-house, gaming-house, or any other disorderly house in such parish or place, such constable or other officer shall forthwith go with such inhabitants to a justice of the peace of the county, &c. in which such parish lies, and shall (upon such inhabitants making oath before such justices that they believe the contents of such notice to be true, and entering into recognizance in the penal sum of 20*l.* each, to give or produce material evidence against such person for such offence) enter into a recognizance in the penal sum of 30*l.*, to prosecute with effect such person for such offence at the next general or quarter sessions of the peace, or at the next assizes to be holden for the county in which such parish or place lies, as to the said justice shall seem meet; and such constable or other officer shall be allowed all the reasonable expenses of such prosecution, to be ascertained by any two justices of the peace of the county, &c., where the offence shall be committed, and shall be paid the same by the

overseers of the poor of such parish or place; and in case such person shall be convicted of such offence, the overseers of the poor of such parish or place shall forthwith pay the sum of 10*l.* to each of such inhabitants (see *Clarke v. Rice*, 1 B. & A. 694); and in case such overseers shall neglect or refuse to pay to such constable or other officer such expenses of the prosecution as aforesaid, or shall neglect or refuse to pay upon demand the said sums of 10*l.* and 10*l.*, such overseers and each of them shall forfeit to the person entitled to the same double the sum so refused or neglected to be paid. Also a copy of the above notice shall be served on the overseers of the poor of the parish or place, as shall presently be noticed. See stat. 58 G. 3, c. 70, s. 7, *infra*.

Upon such constable or other officer entering into such recognizance, the justice shall forthwith make out his warrant to bring the party accused before him, and shall bind him or her over to appear at such general or quarter sessions or assizes, there to answer to such bill of indictment as shall be found against him or her for such offence; and such justice may, if he think fit, demand security for the party's good behaviour in the mean time, and until the indictment shall be found, heard, or determined, or the grand jury have ignored the bill. 25 G. 2, c. 36, s. 6.

If the constable neglect or refuse to go before the justice, or to enter into the recognizance, or if he be wilfully negligent in carrying on the said prosecution, he shall forfeit the sum of 20*l.* to each of such inhabitants so giving notice as aforesaid. *Id.* s. 7. Such inhabitants are, notwithstanding, competent witnesses for the prosecution. *Id.* s. 9.

And by stat. 58 G. 3, c. 70, s. 7, a copy of such notice shall also be served or left at the place of abode of the overseers of the poor of such parish or place, or one of them, and such overseer or overseers shall be summoned or have reasonable notice to attend upon such justice of the peace, before whom such constable shall have notice to attend; and if such overseers or overseer shall then and there enter into such recognizance to prosecute such offender as the constable is required to enter into by stat. 25 G. 2, c. 36, s. 5, then the constable need not enter into such recognizance: but if such overseers or overseer shall neglect to attend such justice, or shall attend and decline to enter into recognizance, then such constable shall enter into the same, and shall prosecute, and be entitled to his expenses, as in and by the said Act is directed.

### *Search Warrant.*

The warrant is directed to a constable. It should require him to search some specified place; and it should require him

to do so in the day time (2 *Hale*, 150), unless there be some very cogent reason for doing otherwise.

In executing this warrant, the owner of the goods, or some person who can identify them, should accompany the constable. If the house or other place specified in the warrant be open, when they reach it, they may enter it, and search for the goods; if shut, the constable must demand admission, and if it be refused, he may break the door open. This will be justifiable on the part of the constable, whether the goods be found in the place or not. 2 *Hale*, 151. The constable then searches the place for the goods; and he must take care not to seize any but those designated in the warrant. See *Crozier v. Cundy*, 6 B. & C. 232. If he find the goods, or any part of them, he seizes them, and also apprehends the person in whose house, &c., he has found them, and he carries both before a justice of the peace, who will then examine into the matter, in precisely the same manner as he would if the party had been brought before him charged with larceny or receiving stolen goods.

### *Summons, Service of.*

A summons upon a charge for an indictable offence is served by a constable or other peace officer upon the person to whom it is directed, either "by delivering the same to him personally, or, if he cannot conveniently be met with, by leaving the same with some person for him at his last or most usual place of abode; and the constable or other peace officer who shall have served the same in manner aforesaid, shall attend at the time and place and before the justices in the said summons mentioned, to depose, if necessary, to the service of such summons." 11 & 12 Vict. c. 42, s. 9. And the same, with respect to a summons upon an information or complaint for a summary conviction or order. 11 & 12 Vict. c. 43, s. 1.

### *Warrant to Apprehend, on an Information or Complaint.*

If the warrant be directed to a constable by name, he must execute it, and is punishable for not doing so, and he may execute it at any place within the jurisdiction of the justice granting it; if directed to the constable of a particular parish or district without naming him, he can only execute it within his parish or district; if directed to all constables within the county or other jurisdiction of the justice granting it, without naming any, any constable or peace officer within such county or jurisdiction, whether headborough, tithingman, borsholder, &c., or however else he may be designated, may execute it at

any place within the jurisdiction of the justice, although it may happen to be out of the parish or district for which such constable or peace officer may have been appointed. And "such warrant may be executed by apprehending the defendant at any place within the county, riding, division, liberty, city, borough, or place, within which the justices issuing the same shall have jurisdiction, or in case of fresh pursuit, at any place in the next adjoining county or place within seven miles of the border of such first-mentioned county, riding, division, liberty, city, borough, or place, without having such warrant backed." 11 & 12 Vict. c. 43, s. 3. In other cases, to enable the constable to execute it out of the jurisdiction, the warrant must be backed, as directed *ante*, p. 105. *Id.* When the party is apprehended, he must be brought before one or more justices of the peace for the county, &c., as directed by the warrant. The warrant, however, is not returnable at any particular time, but may remain in force until it is executed. *Id.* It cannot be executed on a Sunday.

*Warrant of Distress upon a Conviction, &c.*

*How executed.]* The constable, to whom a warrant of distress is directed either specially or generally, must execute it. For this purpose, he seizes so much of the goods of the defendant as he thinks will be sufficient by sale to produce the amount mentioned in the warrant, together with the costs of taking, keeping, and selling the distress. He cannot, however, break open the outer door of the defendant's house, to seize them, unless where the whole or part of the penalty, for which the warrant is granted, goes to the crown. 2 *Hawk.* c. 14, s. 5. If the sum mentioned in the warrant, together with the costs of making the distress, be not forthwith paid, the constable may remove the goods to some place of safe custody; for he is not warranted in impounding on the premises, as in the case of a distress for rent, unless the defendant consent to it. He must keep the goods for the number of days mentioned in the warrant, and then sell them for the best price he can get for them. And the produce is thus disposed of:—first, the costs of taking, keeping, and selling the distress are deducted; then the sum mentioned in the warrant, or so much of it as has been produced by the levy, is paid over to the clerk of the justices named in the warrant; and the surplus, if any, is paid to the defendant.

*In what cases backed.]* If sufficient distress be not found within the jurisdiction of the justice granting the warrant, and the constable have reason to believe that goods of the defendant may be found in some other county or district, he may

present the warrant to a justice of the peace of such other county or district, and upon his swearing to the handwriting of the justice who granted the warrant, the justice to whom he presents it will make an indorsement on it, authorizing the execution of it within the limits of his jurisdiction; and "by virtue of which said warrant and indorsement, the penalty or sum aforesaid, or so much thereof as may not have been before levied or paid, shall and may be levied by the person bringing such warrant, or by the person or persons to whom such warrant was originally directed, or by any constable or other peace officer of such last-mentioned county or place, by distress and sale of the goods and chattels of the defendant in such other county or place." 11 & 12 Vict. c. 42, s. 19.

*How returned.*] Whatever the constable does in pursuance of the warrant, he states in an indorsement on the back of it, and returns it, together with the money levied, to the clerk of the justices named in it; but, if nothing be levied, the constable must certify the same to the magistrate who granted the warrant by an indorsement on it.

#### *Warrant of Commitment on a Conviction or Order.*

A warrant of commitment on a conviction or order, whether issued in the first instance, or after an ineffectual attempt to levy the amount by distress, is executed in the same manner as the warrant to apprehend, last but one mentioned; except that, when the defendant is apprehended, the constable must take him to the house of correction or prison mentioned in the warrant, and there deliver him to the keeper, together with the warrant. See 11 & 12 Vict. c. 43, s. 21. If the defendant, instead of going to prison, pay the sum or sums mentioned in the warrant to the constable, the latter shall cease to execute the warrant, and shall pay the money forthwith to the clerk of the division in which the justice or justices who issued the warrant usually act. *Id.* s. 31.

## GUARDIANS OF THE POOR.

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## 1. GUARDIANS IN UNIONS.

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*Their number and qualification.*] When parishes or townships are formed into a union by order or with the concurrence of the poor law commissioners, for the administration of the laws for the relief of the poor, a board of guardians of the poor for such union is constituted and chosen, and the workhouse or workhouses of the union is governed, and relief to the poor of the several parishes is administered, by such board,—one or more guardians are to be elected for each parish, township, or place separately maintaining its own poor in the union, the number being determined by the com-



missioners; the qualification for the office of guardian consists in being rated to the poor-rate of some parish or township of the union, to such an amount not exceeding the annual rental of 40*l.*, as shall be fixed by the commissioners, and without such qualification no person shall be eligible as a guardian. 4 & 5 W. 4, c. 76, s. 38. The commissioners, having due regard to the relative population or circumstances of any parish included in a union, may alter the number of guardians to be elected for such parish. 7 & 8 Vict. c. 101, s. 18. But no assistant-overseer of any parish, no paid officer engaged in the administration of the laws for the relief of the poor, and no person, who, having been such paid officer, shall have been dismissed from his office within five years previously, shall be capable of serving as a guardian; and no person receiving any emolument from the poor-rates in any parish or union, shall be capable of serving as a guardian in any such parish or union. 5 & 6 Vict. c. 57, s. 14.

*How elected.*] The guardians in each parish, &c. of the union, are elected by the rate-payers (4 & 5 W. 4, c. 76, s. 38), who shall have been rated to the poor-rate the whole of the year preceding, and shall have paid their poor-rates (7 & 8 Vict. c. 101, s. 16) for one whole year, and all due up to the time of voting, except those due within the six months immediately preceding (4 & 5 W. 4, c. 76, s. 40);—and by the owners of property in the parish (*Id.* s. 38), who shall, previously to the day of voting, give a statement in writing of their names and addresses, and the description of their property, to the overseers before the 1st February preceding (*Id.* s. 40; 7 & 8 Vict. c. 101, s. 15);—also corporations, and joint-stock and other companies may vote, by one of their officers appointed by them for the purpose, notice thereof being previously given to the overseers, in the same manner as by owners of property. 4 & 5 W. 4, c. 76, s. 40. And they may re-elect those who have been guardians for the preceding year; or they may elect as guardian any person who may already have been chosen as guardian for any other parish. *Id.* s. 38. Each owner and each rate-payer under 50*l.* shall have one vote; 50*l.* and under 100*l.* two votes; 100*l.* and less than 150*l.* three votes; 150*l.* and less than 200*l.* four votes; 200*l.* and less than 250*l.* five votes; and if it amount to or exceed 250*l.* six votes (7 & 8 Vict. c. 101, s. 14); and when the owner is also occupier, he may vote as well in respect of his occupation, as of his being such owner; owners also may vote by proxy. 4 & 5 W. 4, c. 76, s. 40; and see 7 & 8 Vict. c. 101, s. 15. Occupiers of small tenements, in respect of which the owners are rated to the poor-rate instead of the occupiers, are not entitled to vote in respect of their occupation; neither are the owners, though rated, entitled to vote as occupiers. 13

& 14 Vict. c. 99; 14 & 15 Vict. c. 39. The votes shall be in writing, and be collected and returned in such manner as the commissioners shall direct. 4 & 5 W. 4, c. 76, s. 40. See *R. v. Oldham Union*, 16 Law J. 110, *m*. Any person put in nomination, however, may tender to the officer conducting the election his refusal in writing to serve the office; after which, the election, as regards him, shall be no further proceeded with. 5 & 6 Vict. c. 57, s. 9.

The election shall take place on the 25th day of March, or within [forty, 7 & 8 Vict. c. 101, s. 17,] days after, and the guardians elected for the several parishes, or for the several wards in any parish divided into wards [under 7 & 8 Vict. c. 101, ss. 19-21), shall continue to act as such until the 15th April inclusive in every year, notwithstanding their successors may have been elected previously to that day; and from and after the 15th April, every guardian newly elected for any such parish or ward shall act as such guardian for the ensuing year (14 & 15 Vict. c. 105, s. 2); and in the event of a vacancy occurring by death, removal or resignation, or by refusal or disqualification to act, of any elected guardian,—or if the full number of guardians be not elected,—the remaining members of the board shall continue to act until the next election, or until the board shall be completed. 4 & 5 W. 4, c. 76, s. 38; 5 & 6 Vict. c. 57, s. 12; and see *R. v. Todmorden and Walsden*, 1 Q. B. Rep. 185. And when no person shall be elected as guardian in a parish at the annual election, the person elected for the previous year may, if he think fit, continue to act until the next annual election (*Id.* s. 10); but he cannot do so unless there be an entire failure to elect in the parish. If there be two or more guardians to be elected, and one only is returned, the old guardians go out of office, and cannot serve without a new election. The persons elected must act; they can only refuse the office at the time of the election, as already mentioned, and before they are actually elected, *supra*; and if they allow that opportunity to pass, they must serve. The Poor Law Board, however, may accept the resignation of any person elected as guardian, tendered for any cause they may deem reasonable; and in every case of omission to elect, or of vacancy by death, resignation or disqualification, the commissioners may order a new election for the completion of the board. 5 & 6 Vict. c. 57, s. 11.

For the purpose of conducting the election, the commissioners, by their general order of the 24th July, 1847, ordered as follows:—

*Article 1.* The overseers of every parish in the union shall, before the twenty-sixth day of March in every year, distinguish in the rate-book the name of every rate-payer in their parish who has been rated to the relief of the poor for the whole year

immediately preceding the said day, and has paid the poor-rates made and assessed upon him for the period of one whole year, except those which have been made or become due within the six months immediately preceding the same day.

*Art. 2.* The clerk shall at every future annual election of guardians perform the duties hereby imposed upon him, and all other duties suitable to his office which it may be requisite for him to perform in conducting and completing such election; and in case the office of clerk shall be vacant at the time when any duty relative to such election is imposed on the clerk by this order, or in case the clerk from illness, or other sufficient cause, shall be unable to discharge such duties, the guardians shall appoint some person to perform such of the said duties as then remain to be performed, and the person so appointed shall perform such duties.

*Art. 3.* The guardians shall, before or during every such election, appoint a competent number of persons to assist the clerk in conducting and completing the election in conformity with this order; but if the guardians do not make such appointment within the requisite time, the clerk shall take such measures for securing the necessary assistance as he may deem advisable.

*Art. 4.* The persons appointed under Article 3 shall obey all the directions relative to the conduct of the election which may be given by the clerk for the execution of this order.

*Art. 5.* The overseers of every parish in the union, and every officer having the custody of the poor-rate books of any such parish, shall attend the clerk at such times as he shall require their attendance, until the completion of the election of guardians, and shall, if required by him, produce to him such rate-books, and the registers of owners and proxies, together with the statements of owners, and appointments and statements of proxies, and all books and papers relating to such rates in their possession or power.

Provided that, where any register of owners shall have been prepared in any parish containing a population exceeding two thousand persons, it shall not be necessary to produce the statements of owners.

*Art. 6.* The clerk shall prepare and sign a notice which may be in the form marked (A.) in the schedule to these rules annexed, and which shall contain the following particulars:—

1st. The number of guardians to be elected for each parish in the union.

2nd. The qualification of guardians.

3rd. The persons by whom, and the places where, the nomination papers in respect of each parish are to be received, and the last day on which they are to be sent.

4th. The mode of voting in case of a contest, and the days

on which the voting papers will be delivered and collected.

5th. The time and place for the examination and casting up of the votes.

And the clerk shall cause such notice to be published on or before the fifteenth day of March in the following manner :—

1st. A printed copy of such notice shall be affixed on the principal external gate or door of every workhouse in the union, and shall from time to time be renewed, if necessary, until the ninth day of April.

2nd. Printed copies of such notice shall likewise be affixed on such places in each of the parishes of the union as are ordinarily made use of for affixing thereon notices of parochial business.

Provided that, whenever the day appointed in this order for the performance of any act relating to or connected with the election of guardians shall be a Sunday or Good Friday, such act shall be performed on the day next following, and each subsequent proceeding shall be postponed one day.

*Art. 7.* Any person entitled to vote in any parish, may nominate for the office of guardian thereof, himself, or any other person or number of persons (not exceeding the number of guardians to be elected for such parish), provided that the person or persons so nominated be legally qualified to be elected to that office.

*Art. 8.* Every nomination shall be in writing in the form marked (B.) in the schedule to these rules annexed, and be signed by one person only, as the party nominating, and shall be sent after the fourteenth and on or before the twenty-sixth day of March, to the clerk, or to such person or persons as may have been appointed to receive the same, and the clerk, or such person or persons, shall, on the receipt thereof, mark thereon the date of its receipt, and also a number according to the order of its receipt: provided that no nomination sent before the fifteenth or after the said twenty-sixth day of March shall be valid.

*Art. 9.* If the number of the persons nominated for the office of guardian for any parish shall be the same as, or less than, the number of guardians to be elected for such parish, such persons, if duly qualified, shall be deemed to be the elected guardians for such parish for the ensuing year, and shall be certified as such by the clerk under his hand as hereinafter provided in Art. 22.

*Art. 10.* But if the number of the duly qualified persons nominated for the office of guardian for any parish shall exceed the number of guardians to be elected therein, the clerk shall cause voting papers, in the form marked (C.) in the schedules to these rules annexed, to be prepared and filled up, and shall

insert therein the names of all the persons nominated, in the order in which the nomination papers were received; but it shall not be necessary to insert more than once the name of any person nominated.

*Art. 11.* The clerk shall on the fifth day of April cause one of such voting papers to be delivered by the persons appointed for that purpose, to the address in such parishes of each ratepayer, owner, and proxy qualified to vote therein.

*Art. 12.* If the clerk consider that any person nominated is not duly qualified to be a guardian, he shall state in the voting paper the fact that such person has been nominated, but that he considers such person not to be duly qualified.

*Art. 13.* If any person put in nomination for the office of guardian in any parish shall tender to the officer conducting the election his refusal, in writing, to serve such office, and if in consequence of such refusal the number of persons nominated for the office of guardian for such parish shall be the same as, or less than, the number of guardians to be elected for such parish, all or so many of the remaining candidates as shall be duly qualified shall be deemed to be the elected guardians for such parish for the ensuing year, and shall be certified as such by the clerk under his hand, as hereinafter provided in Art. 22.

*Art. 14.* Each voter shall write his initials in the voting paper delivered to him against the name or names of the person or persons (not exceeding the number of guardians to be elected in the parish) for whom he intends to vote, and shall sign such voting paper; and when any person votes as a proxy, he shall in like manner write his own initials and sign his own name, and state also, in writing, the name of the person for whom he is proxy.

*Art. 15.* Provided that, if any voter cannot write, he shall affix his mark at the foot of the voting paper in the presence of a witness, who shall attest the affixing thereof, and shall write the name of the voter against such mark, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote.

*Art. 16.* If the initials of the voter be written against the names of more persons than are to be elected guardians for the parish, or if the voter do not sign or affix his mark to the voting paper, or if his mark be not duly attested, or his name be not duly written by the witness, or if a proxy do not sign his own name, and state in writing the name of the person for whom he is proxy, such voter shall be omitted in the calculation of votes.

*Art. 17.* The clerk shall cause the voting papers to be collected on the 7th day of April, by the persons appointed or employed for that purpose, in such manner as he shall direct.

**Art. 18.** No voting paper shall be received or admitted, unless the same have been delivered at the address in each parish of the voter, and collected by the persons appointed or employed for that purpose, except as is provided in Art. 19.

**Art. 19.** Provided that every person qualified to vote, who shall not on the fifth day of April have received a voting paper, shall, on application before the eighth day of April to the clerk at his office, be entitled to receive a voting paper and to fill up the same in the presence of the clerk, and then and there to deliver the same to him.

**Art. 20.** Provided also, that in case any voting paper duly delivered shall not have been collected through the default of the clerk, or the persons appointed or employed for that purpose, the voter in person may deliver the same to the clerk before twelve o'clock at noon on the eighth day of April.

**Art. 21.** The clerk shall on the 9th day of April, and on as many days immediately succeeding as may be necessary, attend at the board room of the guardians of the union, and ascertain the validity of the votes, by an examination of the rate-books, and the registers of owners and proxies, and such other documents as he may think necessary, and by examining such persons as he may see fit; and he shall cast up such of the votes as he shall find to be valid, and to have been duly given, collected, or received, and ascertain the number of such votes for each candidate.

**Art. 22.** The candidates, to the number of guardians to be elected for the parish, who, being duly qualified, shall have obtained the greatest number of votes, shall be deemed to be the elected guardians for the parish, and shall be certified as such by the clerk under his hand.

**Art. 23.** The clerk, when he shall have ascertained that any candidate is duly elected as guardian, shall notify the fact of his having been so elected, by delivering or sending, or causing to be delivered or sent to him a notice in the form (D.) in the schedule to these rules annexed.

**Art. 24.** The clerk shall make a list containing the names of the candidates, together with (in case of a contest) the number of votes given for each, and the names of the elected guardians, in the form marked (E.) in the schedule to these rules annexed, and shall sign and certify the same, and shall deliver such list, together with all the nomination and voting papers which he shall have received, to the guardians of the union, at their next meeting, who shall preserve the same for a period of not less than two years.

**Art. 25.** The clerk shall cause copies of such list to be printed, and shall deliver or send, or cause to be delivered or sent, one or more of such copies to the overseers of each parish.

**Art. 26.** The overseers shall affix, or cause to be affixed,

copies of such list, at the usual places for affixing in each parish notices of parochial business.

*Art. 27.* In case of the decease, necessary absence, refusal or disqualification to act, during the proceedings of the election, of the clerk or any other person appointed or employed to act in respect of such election, the delivery of the nominations, voting papers, or other documents to the successor of the clerk or person so dying, absenting himself, refusing or disqualified to act, shall, notwithstanding the terms of any notice issued, be as valid and effectual as if they had been delivered to such clerk or person.

If any question arise as to the right of any person to act as guardian, the Poor Law Board may, if they think fit, inquire into the circumstances of the case, and issue such order therein, under their hands and seal, as they may deem requisite for determining the question; and no such order shall be removed by *certiorari*, unless the application for the writ be made during the term next after the issuing of the order. 5 & 6 Vict. c. 57, s. 8. And no defect in the qualification or election of any person acting as a guardian at a board of guardians, shall vitiate the proceedings of the board, if the majority of the members then assembled there shall be entitled to act as guardians. *Id.* s. 13. Also, by stat. 10 & 11 Vict. c. 109, s. 25, in any civil or criminal proceeding it shall not be necessary to prove the sending of the original order of the Poor Law Commissioners, or of the commissioners constituting any board of guardians, in any case in which any persons professing to form a board in obedience to such order shall have taken upon themselves to act, and shall have continued for three years to act, in the execution of the laws for the relief of the poor; and in no proceeding shall it be lawful to question the qualification or validity of the election of any person as a guardian after the end of twelve months next following the election, or the time when the alleged disqualification or want of qualification of the person, against whom such proceeding shall be directed, shall have arisen.

*Mal-practices at Election of Guardians.]* If any person, pending or after the election of any guardian or guardians, shall wilfully, fraudulently, and with intent to affect the result of such election, commit any of the acts following—that is to say, fabricate in whole or in part, alter, deface, destroy, abstract or purloin any nomination or voting paper used therein, or personate any person entitled to vote at such election, or falsely assume to act in the name or on the behalf of any person so entitled to vote, or interrupt the distribution or collection of the voting papers, or distribute or collect the same under a false pretence of being lawfully authorized to do so; every

such person so offending shall, for every such offence, be liable, upon conviction thereof before any two justices, to be imprisoned in the common gaol or house of correction for any period not exceeding three months, with or without hard labour. 14 & 15 Vict. c. 105, s. 3.

*Justices of the Peace, guardians ex officio.*] Every justice of the peace, residing in any parish [or in any extra-parochial place, the boundary line of which, or the greater part of the boundary line of which, is included within or coincident with the boundary line of such union, 7 & 8 Vict. c. 101, s. 24], and acting for the county, riding, or division in which the same may be situated, shall be an *ex officio* guardian of the united or common workhouse, and shall, until such board of guardians shall be duly elected and constituted as aforesaid, and also in case of any irregularity or delay in any subsequent election of guardians, receive and carry into effect the rules, orders and regulations of the said commissioners; and after such board shall be elected and constituted as aforesaid, every such justice shall *ex officio* be, and be entitled (if he think fit) to act as, a member of such board, in addition to and in like manner as such elected guardians. 4 & 5 Will. 4, c. 76, s. 38. And he shall not be disabled from acting as justice at any petty, special or general quarter sessions, in any matter, merely on the ground that he is *ex officio* a member of any board of guardians complaining, interested or concerned in such matter, or has acted as such at any meeting of the board. 5 & 6 Vict. c. 57, s. 15.

*Guardians incorporated,—how to sue and be sued.*] The guardians are a corporation, and are called “*The guardians of the poor of the ——— union (or, of the parish of ———) in the county of ———* ;” and as such, they may accept, take and hold, for the benefit of such union or parish, any buildings, lands, or hereditaments, goods, effects, or other property, and may use a common seal; and by that name they may bring actions, prefer indictments, and sue and be sued, and take or resist all other proceedings for or in relation to any property, or any bonds, contracts, securities, or instruments, given or to be given to them in virtue of their office; and in every such action and indictment, relating to any property, it shall be sufficient to lay or state the property to be that of the guardians of the ——— union, or of the parish of ———. 5 & 6 Will. 4, c. 69, s. 7; 5 & 6 Vict. c. 57, s. 16. And in all cases in which they may make any application or complaint, or take any proceedings before justices at petty, special, general or quarter sessions, they may empower any of their officers to do so, by order in writing under the hand



of the presiding chairman, and sealed with the common seal of the board. 5 & 6 Vict. c. 57, s. 17.

*Their meetings.*] By the consolidated order of the Poor Law Commissioners, 24th July, 1847, it is ordered as follows:

*Art. 28.* The guardians shall, upon the day of the week, and at the time of day, and at the place already appointed for holding the ordinary meetings, hold an ordinary meeting once at the least in every week or fortnight for the execution of their duties; and may, when they think fit, change the period, time, and place of such ordinary meeting, with the consent of the commissioners previously obtained.

*Art. 29.* The guardians shall at the first meeting after the fifteenth day of April, elect out of the whole number of guardians a chairman and a vice-chairman, who, provided they be guardians at the time, shall continue respectively to act as such chairman and vice-chairman for the year next ensuing.

*Art. 30.* The guardians at any time may elect two vice-chairmen, and if such vice-chairmen be appointed at the same time, the guardians shall determine their precedence; according to which precedence one of the said vice-chairmen shall thenceforth preside and act as in the case when only one vice-chairman is elected.

*Art. 31.* If a chairman or a vice-chairman cease to be a guardian, or refuse, or become incapable to act as chairman or vice-chairman, before the expiration of the term of office, the guardians shall, within one month after the occurrence of the vacancy, refusal, or incapacity, elect some other guardian to be chairman or vice-chairman, as the case may be.

*Art. 32.* Whereas no act of any meeting of the guardians will be valid unless three guardians be present and concur therein; if three guardians be not present at any meeting, the clerk shall make an entry of that fact in the minute book, and the time for holding such meeting shall be deemed to have expired as soon as the said entry shall have been made. But one hour at least shall be allowed to elapse from the time fixed for the commencement of the meeting, before such entry shall be made.

*Art. 33.* If three or four or more guardians be present at any ordinary meeting, such three, or the majority of such four or more guardians, may adjourn the same to the day of the next ordinary meeting, or to some other day previous to the next ordinary meeting.

*Art. 34.* An extraordinary meeting of the guardians may be summoned to be held at any time, upon the requisition of any two guardians, addressed to the clerk. Every such requisition shall be made in writing, in the form (F.) hereunto annexed, and no business, other than the business specified in

the said requisition, shall be transacted at such extraordinary meeting.

*Art. 35.* Notice of every change in the period, time, or place of holding any meeting, and notice of the adjournment of any meeting, and notice of every extraordinary meeting, shall be given in writing to every guardian. Every such notice shall be respectively in the forms (G.), (H.), and (I.) hereunto annexed, and shall be given or sent by the clerk to every guardian, or left at his place of abode two days, if practicable, before the day appointed for the meeting to which it relates.

*Art. 36.* If any case of emergency arise, requiring that a meeting of the guardians should immediately take place, they, or any three of them, may meet at the ordinary place of meeting, and take such case into consideration, and may make an order thereon.

*Proceedings of the board.]* By the same consolidated order it is ordered as follows :

*Art. 37.* At every meeting the chairman, or, in his absence, a vice-chairman, shall preside ; but if at the commencement of any meeting the chairman and vice-chairman or vice-chairmen be absent, the guardians present shall elect one of themselves to preside at such meeting as chairman thereof, until the chairman or a vice-chairman take the chair.

*Art. 38.* Every question at any meeting consisting of more than three guardians, shall be determined by a majority of the votes of the guardians present thereat, and voting on the question. [And by stat. 12 & 13 Vict. c. 103, s. 19, in case of an equality of votes, the presiding chairman shall have a second or casting vote.]

*Art. 39.* No resolution agreed to or adopted by the guardians shall be rescinded or altered by them, unless some guardians shall have given to the board seven days' notice of a motion to rescind or alter such resolutions, which notice shall be forthwith entered on the minutes by the clerk. Provided always, that this regulation shall not extend to any resolution which immediately concerns the allowance of relief to any person, or the punishment of any pauper, or to any resolution which the commissioners may request the guardians to consider or amend, or to any question of emergency.

*Art. 40.* The guardians may from time to time (as occasion may require), appoint a committee to consider and report on any special subject, and such committee may meet at such times and places as to them may seem convenient ; but no act or decision of any such committee shall of itself be deemed to be the act of the guardians.

**Art. 41.** At every ordinary meeting of the guardians, the business, shall, as far as may be convenient, be conducted in the following order :—

**Firstly.**—The minutes of the last ordinary meeting, and of any other meeting which may have been held since such ordinary meeting, shall be read to the guardians ; and in order that such minutes may be recognized as a record of the acts of the guardians at their last meeting, they shall be signed by the chairman presiding at the meeting at which such minutes are read, and an entry of the same having been so read shall be made in the minutes of the day when read.

**Secondly.**—The guardians shall dispose of such business as may arise out of the minutes so read, and shall give the necessary directions thereon.

**Thirdly.**—They shall proceed to give the necessary directions respecting all applications for relief made since the last ordinary meeting, and also respecting the amount and nature of relief to be given and continued to the paupers then in the receipt of relief, until the next ordinary meeting, or for such other time as such relief may be deemed to be necessary.

**Fourthly.**—They shall hear and consider any application for relief which may be then made, and determine thereon.

**Fifthly.**—They shall read the report of the state of the workhouse or workhouses, examine all books and accounts relative to the relief of the paupers of the union, and give all needful directions concerning the management and discipline of the said workhouse or workhouses, and the providing of furniture and stores and other articles.

**Sixthly.**—They shall examine the treasurer's account, and shall, when necessary, make orders on the overseers or other proper authorities of the several parishes in the union for providing such sums as may be lawfully required by the guardians on account of the respective parishes.

**Seventhly.**—They shall transact any such business as may not fall within any of the above clauses.

**Art. 42.** When the guardians have allowed relief in the workhouse to any applicant, a written or printed order for his admission therein, signed by the clerk, shall be forthwith delivered to the applicant, or to any person on his behalf.

**Art. 43.** When the guardians have allowed out-door relief, in money or kind, to any applicant, the particulars of such relief shall be entered by the proper relieving officer, in a ticket, according to Form (K.), and such ticket shall be delivered by him to the applicant, or to some person on his behalf.

*Contracts by them.]* By the same consolidated order, it is ordered as follows :

**Art. 44.** All contracts to be entered into on behalf of the union, relating to the maintenance, clothing, lodging, employment, or relief of the poor, or for any other purpose relating to or connected with the general management of the poor, shall be made and entered into by the guardians.

Contracts made by or on behalf of any parish or union, not in conformity with the regulations of the commissioners, in that behalf in force at the time of making and entering into the same, or otherwise sanctioned by them, are voidable, and if the Poor Law Board shall so direct, shall be null and void ; and all payments made thereafter under such contract shall be disallowed in the passing of the accounts of the overseers, guardians, or officer, by whom the payment shall have been made. 4 & 5 W. 4, c. 75, s. 49.

**Art. 45.** The guardians shall require tenders to be made in some sealed paper for the supply of all provisions, fuel, clothing, furniture, or other goods or materials, the consumption of which may be estimated, one month with another, to exceed ten pounds per month, and of all provisions, fuel, clothing, furniture, or other goods or materials, the cost of which may be reasonably estimated to exceed fifty pounds in a single sum, and shall purchase the same upon contracts to be entered into after the receipt of such tenders.

**Art. 46.** Any work or repairs to be executed in the workhouse, or the premises connected with the workhouse, or any fixtures to be put up therein, which may respectively be reasonably estimated to exceed the cost of fifty pounds in one sum, shall be contracted for by the guardians, on sealed tenders, in the manner prescribed in Articles 45 and 47.

**Art. 47.** Notice of the nature and conditions of the contract to be entered into, of the estimated amount of the articles required, of the last day on which tenders will be received, and the day on which the tenders will be opened, shall be given in some newspaper circulating in the union, not less than ten days previous to the last day on which such tenders are to be received ; and no tender shall be opened by the clerk, or any guardian, or other person, prior to the day specified in such notice, or otherwise than at a meeting of the said guardians.

**Art. 48.** When any tender is accepted, the party making the tender shall, in pursuance of these regulations, enter into a contract, in writing, with the guardians, containing the terms, conditions, and stipulations mutually agreed upon, and whenever the guardians deem it advisable, the party contracting shall find one or more surety or sureties, who shall enter into a bond conditioned for the due performance of the contract, or shall otherwise secure the same.

**Art. 49.** Provided always, that if, from the peculiar nature of any provisions, fuel, clothing, furniture, goods, materials, or fixtures to be supplied, or of any work or repairs to be executed, it shall appear to the guardians desirable that a specific person or persons be employed to supply or execute the same, without requiring sealed tenders as hereinbefore directed, it shall be lawful for such guardians, with the consent of the commissioners first obtained, to enter into a contract with the said person or persons, and to require such sureties and securities as are specified in Art. 48.

**Art. 50.** Every contract to be hereafter made by any guardians shall contain a stipulation requiring the contractor to send in his bill or account of the sum due to him for goods or work, on or before some day to be named in the contract.

**Art. 51.** The guardians shall fix some day or days, not being more than twenty-one days after the end of each quarter, for the attendance of contractors and tradesmen, or their authorized agents, and the clerk shall notify such day to every contractor or tradesman to whom money may be due, or to his agent, or he shall, under the direction of the guardians, cause the same to be advertised in some newspaper.

Contracts, to bind the guardians, ought to be under their corporate seal, and should relate to some matter incident to the purposes for which they were incorporated. Where, upon the representation of the board of guardians of the Strand union, made at the request of the parish officers of C., one of the parishes of the union, the Poor Law Commissioners ordered the guardians to have a survey and plan made of the parish of C., for the purposes of stat. 6 & 7 W. 4, c. 96; the board of guardians accordingly contracted with J. S. to execute the survey and plan for 500*l.*; and after its completion, they verbally agreed with him for a reduced plan, as a key to the larger one, and for a re-survey of part of the parish, which were accordingly executed by J. S., and delivered to the board of guardians; in an action by J. S. against the board of guardians, for the value of the work thus verbally agreed for, the court held that they were not liable, the contract not being made under seal, and being for a matter which was not incident to the purposes for which the defendants were incorporated. *Paine v. Guardians of the Strand Union*, 15 Law J. 89, *m.* And, for the same reason, it has been holden that an action would not lie against the guardians of a union, by a collector of poor rates, for his poundage. *Smart v. Guardians of the West Ham Union*, 24 Law J. 201, *ex.* But where the guardians of a union verbally directed their officer to have gates made for their union workhouse, and they were made by the plaintiff accordingly, and set up, and retained; and the guardians paid their own officer for them, who, however, did not pay the

plaintiff; the plaintiff afterwards brought an action for the amount against the guardians, and recovered, the jury finding that the gates were necessities; but a new trial was moved for, on the ground that the defendants being a corporation, were not liable, as the contract was not under seal; the court, however, refused it, saying that as the jury had found the gates to be necessary for the purposes for which the defendants were incorporated, and as the defendants had received and retained them, they had thereby adopted the contract made by their officer. *Sanders v. Guardians of the St. Neot's Union*, 15 Law J. 104, m.

*Mode of Obtaining Contributions to Union Funds.*

*Orders for contributions and payments.]* By the consolidated order it is provided as follows :—

*Art. 81.* The clerk shall, four weeks at least before the twenty-fifth day of March and the twenty-ninth day of September respectively in each year, refer to and ascertain the cost to each parish in the union for the maintenance of the poor, and other separate charges, as well as for the common charges incurred in the half of the last year, corresponding to the half year next coming, and shall estimate and, as near as may be, divide amongst the parishes any extraordinary charges to which the union may be liable in the coming half year, and he shall also estimate the probable balance due to or from the parish at the end of the current half year, and shall then prepare the orders on the several parishes for the sums which, upon such computation, it shall appear necessary for them to contribute to the expenses of the union for the coming half year; and the orders so prepared shall be laid before the guardians for their consideration, three weeks at least before the expiration of the current half year.

*Art. 82.* The guardians shall make orders on the overseers or other proper authorities of every parish of the union, from time to time, for the payment to the guardians of all such sums as may be required by them for the relief of the poor of the parish, and for the contribution of the parish to the common fund of the union, and for any other expenses chargeable by the guardians on the parish; and in such orders the contributions shall be directed to be paid in one sum or by instalments, on days specified, as to the guardians may seem fit.

*Art. 83.* Every such order shall be made according to the following form. It shall be signed by the presiding chairman of the meeting, and two other guardians present thereat, and shall be countersigned by the clerk.

The following is the form of the order :—

*To A. B. and C. D. overseers [or —] of the parish of —.*

*You are hereby ordered and directed to pay to F.G. — of —, on behalf of the guardians of the poor of the — union, on the — day of —, at —, the sum of — pounds, — shillings, and — pence, from the poor rates of the parish of —, towards the relief of the poor thereof, and to the contribution of the parish to the common fund of the union, and such other expenses as are chargeable by the said guardians on the said parish, and to take the receipt of the said F. G., for the said sum of £ —.*

*Given under our hands, at a meeting of the guardians of the poor of the said — union, held on the — day of —, 18—.*

(Signed.) X. Y. { Presiding  
Chairman.  
W. X. } Guardians.  
U. V. }

*(Counter-signature of the clerk to the guardians.)*

By stat. 2 & 3 Vict. c. 84, s. 1, “in every case in which any contribution, by overseers or other officers of any parish, of moneys required by the board of guardians or persons acting as guardians for such parish, or for any union which shall include such parish, for the performance of their duties, shall be in arrear, it shall be lawful for any two justices acting within the district wherein such parish shall be situate, on application under the hand of the chairman or acting chairman of such board, to summon the said overseer or other officers to show cause, at a special sessions to be summoned for the purpose, why such contribution has not been paid, and after hearing the complaint preferred under the authority of such chairman or acting chairman, and on behalf of such board if the justices at such sessions shall think fit, by warrant under their hands and seals, to cause the amount of the contribution so in arrear, together with the costs occasioned by such arrear, to be levied and recovered from the said overseers or other officers, or any of them, in like manner as moneys assessed for the relief of the poor may be levied and recovered, and the amount of such arrear, together with the costs as aforesaid, when levied and recovered, to be paid to the said board : provided always that no distress made under any such warrant of justices shall be replevisable.”

And by stat. 12 & 13 Vict. c. 103, s. 7, where the guardians of any union or parish shall make any order for the payment of money upon overseers or other officers of any parish upon

whom they are empowered by law to make it, and a copy of such order shall be served upon any one of such overseers or other officers, it shall be lawful for the said guardians to enforce such order against the person so served as fully and as effectually as if a copy thereof had been also served upon every one of such overseers or other officers.

*Payments by them.]* By the consolidated order, *Art. 84*, the guardians shall pay every sum greater than five pounds, by an order, which shall be drawn upon the treasurer of the union, and shall be signed by the presiding chairman and two other guardians at a meeting, and shall be countersigned by the clerk.

*Art. 85.* The guardians shall examine at their board, or shall cause to be examined by some committee, or guardian authorized by them for the purpose, every bill exceeding in amount one pound (except the salaries of officers) brought against the union; and when any such bill has been allowed by the board, or by such committee or guardian, a note of the allowance thereof shall be made on the face of the bill before the amount is paid.

*Custody of Bonds.] Art. 86.* (Consolidated order.) The guardians shall provide for the safe custody of all bonds given in pursuance of the regulations of the commissioners, so always that no bond given by any person shall remain in the custody of such person himself.

*Art. 87.* The guardians shall, at the audit next after the twenty-fifth day of March in every year, cause every person having the custody of bonds given by any officer of the union, to produce such bonds to the auditor for his inspection.

*What costs, &c., they may pay.]* It shall be lawful for any board of guardians or district board to pay out of the funds in their hands the reasonable costs of the apprehension and of the prosecution of any person who, according to the laws in force at the time being, is charged with refusing or neglecting to maintain himself or his family, or with running away and leaving his family chargeable, or whereby such family has become chargeable,—or with wilfully neglecting or disobeying the rules, orders, and regulations of the Poor Law Commissioners, or with any offence or misbehaviour in any workhouse,—or with deserting or running away from any workhouse, and carrying away clothes, linen, or other goods or things belonging to any workhouse, or given or procured or provided as or for relief,—or with neglect or disobedience of the reasonable and lawful orders of justices or guardians, or of any district board, in the administration of the laws relating to the relief of the poor,—or with obstructing or assaulting any officer engaged in



the administration of the laws for relief of the poor,—or with fraudulently obtaining, stealing, purloining, embezzling, wasting, or injuring, or wilfully misapplying, any property applicable to or connected with the relief of the poor, or with any offence directly affecting the administration of the laws for the relief of the poor,—and the reasonable costs of apprehending and prosecuting any officer who may have been employed in the administration of the laws for the relief of the poor, for any neglect or breach of any duty of his office, or for any maltreatment or abuse of any poor person;—and, subject to the approval of the said commissioners, every board of guardians or district board shall pay the costs of all legal proceedings taken by the auditor, or under his direction, for the protection of the poor rates or property of any parish, union, or district, or taken by any other person whom the board of guardians or district board have authorized or directed to institute such prosecution or legal proceedings; and to the extent to which any such costs may not be repaid by the offending or other party, or from the county, liberty, or borough rates, the guardians of any union then may, in any of the cases aforesaid, having due regard to the circumstances of the case, and subject to the approval of the Poor Law Commissioners, charge such expenses, either to the common funds of the union, or to any parish or parishes comprised therein; and the district board of any district may, having like regard to the circumstances of the case, and subject to the like approval of the Poor Law Commissioners, charge such expenses, either to the funds of the whole of such district, or on any one or more of the unions and parishes comprised therein. 7 & 8 Vict. c. 101, s. 59.

*Their duty in maintaining the poor out of the parish funds.]* By stat. 4 & 5 W. 4, c. 76, s. 38, in all unions under that Act, where a board of guardians shall be constituted and chosen, “the workhouse or workhouses of such union shall be governed, and the relief of the poor in such union shall be administered, by such board of guardians.”

And by sect. 54, the ordering, giving and directing of all relief to the poor of any parish, which according to the provisions of stat. 22 G. 3, c. 83, usually called “Gilbert’s Act,” or 59 G. 3, c. 12, usually called “Sturges Bourne’s Act,” or of stat. 1 & 2 W. 4, c. 80, the Select Vestry Act, or of this Act, or of any local Acts, shall be under the government and control of any guardians of the poor, or of any select vestry, and whether forming any part of any union or incorporation or not (but subject in all cases to, and saving and excepting the powers of, the said commissioners appointed under this Act), shall appertain and belong exclusively to the guardians of the poor or select vestry, according to the

respective provisions of the Acts under which such guardians or select vestry may have been or shall be appointed, and it shall not be lawful for any overseer of the poor to give any further or other relief or allowance from the poor-rate, than such as shall be ordered by such guardians or select vestry ;—except in cases of sudden and urgent necessity, in which cases he is required to give such temporary relief as each case shall require, in articles of absolute necessity, but not in money, and whether the applicant for relief be settled in the parish where he shall apply for relief or not.

Also, by the consolidated order of the commissioners, 24th July, 1847, Art. 152, the commissioners declare, that, subject to the rules and regulations herein contained, the guidance, government, and control of every workhouse, and of the officers, servants, assistants, and paupers within such workhouse, shall be exercised by the guardians of the union.

The guardians of the poor of unions or parishes relieve the poor in the respective unions or parishes, either in workhouses or out of them, in the manner ordained by the order of the Poor Law Commissioners above mentioned. And for this purpose, and to defray the common charges of the union and other costs and charges which the guardians may incur on behalf of the parish, the churchwardens and overseers of the respective parishes must pay to the guardians, from time to time, out of the poor-rates made and collected by them, such sums as the guardians may require, and in such proportions as the guardians shall direct. In unions constituted under the Poor Law Amendment Act, the Poor Law Commissioners, by their consolidated order, 25th July, 1847, have ordered :

*Art. 81.* The clerk shall, four weeks at least before the twenty-fifth day of March and the twenty-ninth day of September respectively in each year, refer to and ascertain the cost to each parish in the union for the maintenance of the poor, and other separate charges, as well as for the common charges incurred in the half of the last year corresponding to the half year next coming, and shall estimate and, as near as may be, divide amongst the parishes any extraordinary charges to which the union may be liable in the coming half year, and he shall also estimate the probable balance due to or from the parish at the end of the current half year, and shall then prepare the orders on the several parishes for the sums which, upon such computation, it shall appear necessary for them to contribute to the expenses of the union for the coming half year ; and the orders so prepared shall be laid before the guardians for their consideration, three weeks at least before the expiration of the current half year.

*Art. 82.* The guardians shall make orders on the overseers

or other proper authorities of every parish of the union, from time to time, for the payment to the guardians of all such sums as may be required by them for the relief of the poor of the parish, and for the contribution of the parish to the common fund of the union, and for any other expenses chargeable by the guardians on the parish; and in such orders the contributions shall be directed to be paid in one sum or by instalments, on days specified, as to the guardians may seem fit.

*Art. 83.* Every such order shall be made according to the form (M.) hereunto annexed. It shall be signed by the presiding chairman of the meeting, and two other guardians present thereat, and shall be countersigned by the clerk.

The following is the form of the order :—

*To A. B. and C. D. overseers [or — ] of the parish of —.*

*You are hereby ordered and directed to pay to F. G. — of —, on behalf of the guardians of the poor of the — union, on the — day of —, at —, the sum of — pounds, — shillings, and — pence, from the poor rates of the parish of —, towards the relief of the poor thereof, and to the contribution of the parish to the common fund of the union, and such other expenses as are chargeable by the said guardians on the said parish, and to take the receipt of the said F. G., for the said sum of £ —.*

*Given under our hands, at a meeting of the guardians of the poor of the said — union, held on the — day of —, 18 —,*

(Signed) X. Y. { *Presiding*  
                  W. X. { *Chairman.*  
                  U. V. { *Guardians.*

*(Counter-signature of the clerk to the guardians.)*

And by stat. 2 & 3 Vict. c. 84, s. 1, “in every case in which any contribution, by overseers or other officers of any parish, of monies required by the board of guardians or persons acting as guardians for such parish, or for any union which shall include such parish, for the performance of their duties, shall be in arrear, it shall be lawful for any two justices acting within the district wherein such parish shall be situate, on application under the hand of the chairman or acting chairman of such board, to summon the said overseer or other officers to show cause, at a special sessions to be summoned for the purpose, why such contribution has not been paid, and, after hearing the complaint preferred under the authority

of such chairman or acting chairman, and on behalf of such board, if the justices at such sessions shall think fit, by warrant under their hands and seals to cause the amount of the contribution so in arrear, together with the costs occasioned by such arrear, to be levied and recovered from the said overseers or other officers, or any of them, in like manner as monies assessed for the relief of the poor may be levied and recovered, and the amount of such arrear, together with the costs as aforesaid, when levied and recovered, to be paid to the said board : provided always that no distress made under any such warrant of justices shall be replevisible."

And by stat. 12 & 13 Vict. c. 103, s. 7, where the guardians of any union or parish shall make any order for the payment of money upon overseers or other officers of any parish upon whom they are empowered by law to make it, and a copy of such order shall be served upon any one of such overseers or other officers, it shall be lawful for the said guardians to enforce such order against the person so served as fully and as effectually as if a copy thereof had been also served upon every one of such overseers or other officers.

And by stat. 7 & 8 Vict. c. 101, s. 63, if the overseers of any parish wilfully neglect to make or collect sufficient rates for the relief of the poor, or to pay such monies to the guardians of any parish or union as such guardians may require, and if by reason of such neglect any relief directed by the board of guardians to be given to any poor person be delayed or withheld during a period of seven days, every such overseer shall upon conviction thereof forfeit and pay for every such offence any sum not exceeding twenty pounds.

As to the manner in which relief is to be administered, see *Arch. Poor Law, Justice of the Peace*, 3rd vol. *passim*.

*Their duty as to able-bodied poor.*] By stat. 4 & 5 W. 4, c. 76, s. 52, after reciting that "a practice has obtained of giving relief to persons or their families, who, at the time of applying for or receiving such relief, were wholly or partially in the employment of individuals, and the relief of the able-bodied and their families is in many places administered in modes productive of evil in other respects; and whereas difficulty may arise in case any immediate and universal remedy is attempted to be applied in the matters aforesaid:" it is enacted, "that from and after the passing of this Act it shall be lawful for the said commissioners, by such rules, orders, or regulations, as they may think fit, to declare to what extent and for what period the relief to be given to able-bodied persons or to their families in any particular parish or union may be administered out of the workhouse of such parish or union, by payments in money, or with food or clothing in kind, or partly in kind and partly in money,

and in what proportions, to what persons or class of persons, at what times and places, on what conditions, and in what manner such out-door relief may be afforded; and all relief which shall be given by any overseer, guardian, or other person having the control or distribution of the funds of such parish or union, contrary to such rules or regulations, shall be, and the same is hereby declared to be unlawful, and shall be disallowed in the accounts of the person giving the same, subject to the exceptions hereinafter mentioned." The section then provides for delaying the introduction of such regulations, in particular parishes, where from circumstances they may be deemed inexpedient, until communication can be had with the poor law commissioners. It also provides, "that in case the overseers or guardians of any parish or union, in which such orders or regulations shall be in force, shall depart from them or any of them in any particular instance or instances of emergency, and shall within fifteen days after every such departure report the same and the grounds thereof to the said commissioners, and the said commissioners shall approve of such departure,—or if the relief so given shall have been given in food, temporary lodging, or medicine, and shall have been so reported as aforesaid,—then and in either of such cases the relief granted by such overseers or guardians, if otherwise lawful, shall not be unlawful or subject to be disallowed. *Id.* s. 52.

Before this statute, justices were authorized to order relief to poor persons in their dwellings, during any time not exceeding a month. 36 G. 3, c. 23. This time was afterwards extended to six months; and the justices were permitted to renew the order from time to time, as they might think fit. 55 G. 3, c. 137, s. 3. In parishes, also, under select vestries or guardians, justices were authorized to make a similar order, to continue in force for a month. 58 G. 3, c. 12, ss. 1, 5. But these statutes are now repealed. 4 & 5 W. 4, c. 76, s. 53.

The following are the rules laid down by the poor law commissioners with respect to unions, by their order of the 21st December, 1844, which have provided adequate work-house accommodation for the relief of the poor.

*Art.* 1. Every able-bodied person, male or female, requiring relief from any parish within any of the said unions, shall be relieved wholly in the workhouse of the union, together with such of the family of every such able-bodied person as may be resident with him or her, and may not be in employment, and together with the wife of every such able-bodied male person, if he be a married man, and if she be resident with him; save and except in the following cases:—

1st. Where such person shall require relief on account of sudden and urgent necessity.

2nd. Where such person shall require relief on account of

any sickness, accident, or bodily or mental infirmity affecting such person, or any of his or her family.

3rd. Where such person shall require relief for the purpose of defraying the expenses, either wholly or in part, of the burial of any of his or her family.

4th. Where such person, being a widow, shall be in the first six months of her widowhood.

5th. Where such person shall be a widow, and have a legitimate child or legitimate children dependent upon her, and incapable of earning his, her, or their livelihood, and have no illegitimate child born after the commencement of her widowhood.

6th. Where such person shall be confined in any gaol or place of safe custody, subject always to the regulation contained in Art. 4.

7th. Where such person shall be the wife or child of any able-bodied man who shall be in the service of Her Majesty as a soldier, sailor, or marine.

8th. Where any able-bodied person, not being a soldier, sailor, or marine, shall not reside within the union, but the wife, child, or children of such person shall reside within the same, the board of guardians of the union, according to their discretion, may, subject to the regulation contained in Art. 4, afford relief in the workhouse to such wife, child, or children, or may allow out-door relief for any such child or children being within the age of nurture, and resident with the mother within the union.

*Art. 2.* In every case in which out-door relief shall be given on account of sickness, accident, or infirmity, to any able-bodied male person resident within any of the said unions, or to any member of the family of any able-bodied male person, an extract from the medical officer's weekly report (if any such officer shall have attended the case), stating the nature of such sickness, accident, or infirmity, shall be specially entered in the minutes of the proceedings of the board of guardians of the day on which the relief is ordered or subsequently allowed.

But if the board of guardians shall think fit, a certificate under the hand of a medical officer of the union, or of the medical practitioner in attendance on the party, shall be laid before the board, stating the nature of such sickness, accident, or infirmity, and a copy of the same shall be in like manner entered in the minutes.

*Art. 3.* No relief shall be given from the poor-rates of any parish comprised in any of the said unions, to any person who

does not reside in some place within the union, save and except in the following cases :—

- 1st. Where such person, being casually within such parish, shall become destitute.
- 2nd. Where such person shall require relief on account of any sickness, accident, or bodily or mental infirmity, affecting such person, or any of his or her family.
- 3rd. Where such person shall be entitled to receive relief from any parish in which he or she may not be resident, under any order which justices may by law be authorized to make.
- 4th. Where such person, being a widow, shall be in the first six months of her widowhood.
- 5th. Where such person is a widow, who has a legitimate child dependent on her for support, and no illegitimate child born after the commencement of her widowhood, and who at the time of her husband's death was resident with him in some place other than the parish of her legal settlement, and not situated in the union in which such parish may be comprised.
- 6th. Where such person shall be a child under the age of sixteen, maintained in a workhouse or establishment for the education of pauper children not situate within the union.
- 7th. Where such person shall be the wife or child, residing within the union, of some person, not able-bodied, and not residing within the union.
- 8th. Where such person shall have been in the receipt of relief from such parish in the union from which such person seeks relief, at some time within the twelve calendar months next preceding the date of that one of the several orders hereinbefore recited which was applicable to that union, being settled in such parish, and not being resident within the union at the time of the allowance of the relief.

**Art. 4.** Where the husband of any woman is beyond the seas, or in custody of the law, or in confinement in a licensed house or asylum as a lunatic or idiot, all relief which the guardians shall give to his wife, or her child or children, shall be given to such woman, in the same manner, and subject to the same conditions, as if she were a widow.

**Art. 5.** It shall not be lawful for the guardians, or any of their officers, or for the overseer or overseers of any parish in the union, to pay, wholly or in part, the rent of the house or lodging of any pauper, or to apply any portion of the relief ordered to be given to any pauper in payment of any such rent, or to retain any portion of such relief for the purpose of

directly or indirectly discharging such rent, in full or in part, for any such pauper.

Provided always, that nothing in this article contained shall apply to any shelter or temporary lodging, procured in any case of sudden and urgent necessity, or mental imbecility, or shall be taken to prevent the said guardians, in regulating the amount of relief to be afforded to any particular person, from considering the expense to be incurred by such person in providing lodging.

*Art. 6.* Provided always, that in case the guardian of any of the said unions depart in any particular instance from any of the regulations hereinbefore contained, and within fifteen days after such departure report the same, and the grounds thereof, to the poor law commissioners, and the poor law commissioners approve of such departure, then the relief granted in such particular instance shall, if otherwise lawful, not be deemed to be unlawful, or be subject to be disallowed.

*Art. 7.* No relief which may be contrary to any regulation in this order shall be given by way of loan; and any relief which may be given to, or on account of, any person above the age of twenty-one, or to his wife, or any part of his or her family under the age of sixteen, under Art. 1, or any of the exceptions thereto, or under any of the exemptions to Art. 3, or under Art. 4, or under the proviso to Art. 5, may, if the guardians think fit, be given by way of loan.

In the unions which do not possess adequate workhouse accommodation, and which are consequently not subject to the provisions of the above general order of the 21st December, 1844, relief to able-bodied poor is administered by the guardians subject to the following regulations, contained in the general order of the poor law board, dated the 14th December, 1852.

*Art. 1.* Whenever the guardians allow relief to any able-bodied male person, out of the workhouse, one-half at least of the relief so allowed shall be given in articles of food or fuel, or in other articles of absolute necessity.

*Art. 2.* In any case in which the guardians allow relief for a longer period than one week to an indigent poor person, resident within their union or parish respectively, without requiring that such person shall be received into the workhouse, such relief shall be given or administered weekly, or at such more frequent periods as they may deem expedient.

*Art. 3.* It shall not be lawful for the guardians or their officers—

To establish any applicant for relief in trade or business :

Nor to redeem from pawn for any such applicant any tools, implements, or other articles ;

Nor to purchase and give to such applicant any tools,



implements, or other articles, except articles of clothing or bedding where urgently needed and such articles as are hereinbefore referred to in Art. 1 ;

Nor to pay, directly or indirectly, the expense of the conveyance of any poor person, unless conveyed under the provisions of some statute, or under an order of justices or other lawful authority, or in conformity with some order or regulation of the poor law commissioners or the poor law board, except in the following cases ; viz.

1st. The case of a person conveyed to or from a district school, or an hospital or infirmary, or a lunatic asylum, or a house licensed, or hospital registered for the reception of lunatics.

2nd. The case of a person conveyed to the workhouse of the union or parish in which such person is at the time chargeable.

3rd. The case of a person conveyed to or from any other workhouse or other house or establishment for the reception of poor persons, in which for the time being it shall be lawful for the guardians to place such person.

Nor to give money to or on account of any such applicant for the purpose of effecting any of the objects in this Article mentioned.

Nor to pay, wholly or in part, the rent of the house or lodging of any pauper, nor to apply any portion of the relief ordered to be given to any pauper in payment of any such rent, nor to retain any portion of such relief for the purpose of directly or indirectly discharging such rent, in full or in part, for any such pauper ;

Provided always, that nothing in this article contained shall apply to any shelter or temporary lodging procured for a poor person, in any case of sudden or urgent necessity or mental imbecility.

*Art. 4.* No relief shall be given from the poor rates of any of the said parishes, or of any parish comprised in any of the said unions, to any person who does not reside in some place within such parish or union respectively, save and except in the following cases :—

1st. The case of a person casually within such parish, and destitute.

2nd. The case of a person requiring relief on account of any sickness, accident, or bodily or mental infirmity affecting him or her or any of his or her family.

3rd. The case of a widow, having a legitimate child dependent on her for support, and no illegitimate child born after the commencement of her widowhood, and who at the time of her husband's death was resident

with him in some place other than the parish of her legal settlement, and not situated in the union in which such parish is comprised.

4th. The case of a child under the age of sixteen, maintained in a workhouse or establishment for the education of poor children not situate within the union or parish.

5th. The case of the wife or child, residing within such parish or union, of some person not residing therein.

6th. The case of a person who has been in the receipt of relief from such parish, or from some parish in the union from which he or she seeks relief, at some time within the twelve calendar months next preceding the date of this order.

*Art. 5.* No relief shall be given to any able-bodied male person while he is employed for wages or other hire or remuneration by any person.

*Art. 6.* Every able-bodied male person, if relieved out of the workhouse, shall be set to work by the guardians, and be kept employed under their direction and superintendence so long as he continues to receive relief.

*Art. 7.* Provided that the regulations in Articles 5 and 6 shall not be imperative in the following cases :—

1st. The case of a person receiving relief on account of sudden and urgent necessity.

2nd. The case of a person receiving relief on account of any sickness, accident, or bodily or mental infirmity affecting such person or any of his family.

3rd. The case of a person receiving relief for the purpose of defraying the expenses of the burial of any of his family.

4th. The case of the wife, child, or children of a person confined in any gaol or place of safe custody.

5th. The case of the wife, child, or children, resident within the parish or union, of a person not residing therein.

*Art. 8.* The guardians shall, within thirty days after they shall have proceeded to act in execution of Art. 6, report to the poor law board the place or places at which able-bodied male paupers shall be set to work, the sort or sorts of work in which they or any of them shall be employed, the times and mode of work, and the provision made for superintending them while working, and shall forthwith discontinue or alter the same, if the poor law board shall so require.

*Art. 9.* No relief which shall be contrary to any regulation in this order shall be given by way of loan; but any relief which may be given in conformity with the provisions of this order to or on account of any person to whom relief may be lawfully given, above the age of twenty-one, or to his wife, or

any part of his or her family under the age of sixteen, may, if the guardians shall think fit, be given by way of loan.

*Art. 10.* If the guardians shall, upon consideration of the special circumstances of any particular case, deem it expedient to depart from any of the regulations hereinbefore contained (except those contained in *Art. 3*), and within twenty-one days after such departure shall report the same, and the grounds thereof, to the poor law board, the relief which may have been so given in such case by such guardians before an answer to such report shall have been returned by the said board shall not be deemed to be contrary to the provisions of this order; and if the poor law board shall approve of such departure, and shall notify such approval to the guardians, all relief given in such case after such notification, so far as the same shall be in accordance with the terms and conditions of such approval, shall be lawful, anything in this order to the contrary notwithstanding.

The poor law board, in addition to the foregoing out-door relief prohibitory orders, have also issued to certain unions orders providing for a task of work for able-bodied paupers who may be relieved out of the workhouse.

The following are the provisions of the Labour Test Order :—

*Art. 1.* Every able-bodied male pauper receiving relief from any parish within the union, and not relieved in the workhouse, shall be relieved in the following manner; that is to say :—

Half at least of the relief given to such pauper shall be given in food, clothing, and other articles of necessity.

No such pauper shall receive relief from the guardians of the union, or any of their officers, or any overseer of any parish in the union, while he is employed for wages or other hire or other remuneration by any person; but every such pauper so relieved shall be set to work by the guardians.

*Art. 2.* The place or places at which able-bodied male paupers shall be so set to work in the union, the sort or sorts of work in which they or any of them shall be employed, the times and mode of work, and all other matters relating to the employment of such able-bodied paupers, shall be fixed and regulated in such manner as the poor law commissioners shall direct, upon a report being made to them by the guardians respecting the employment of such able-bodied paupers; which report the guardians shall transmit to the said commissioners within fourteen days after the day when this order shall come into force, and from time to time afterwards as the poor law commissioners may require.

*Art. 3.* The guardians shall, upon the direction of the poor law commissioners, appoint, either for a definite or indefinite

term, an officer for the superintendence of the paupers employed under Arts. 1 and 2, to be styled "*Superintendent of Pauper Labour*," and an assistant or assistants to such officer; and every superintendent and assistant who may be so appointed shall comply with the regulations of this order, and any directions which the poor law commissioners may give in pursuance of Art. 2.

*Art. 4.* Every superintendent and assistant to be appointed under this order, shall be appointed by a majority of the guardians present at a meeting of the board, and every such appointment shall, as soon as the same shall have been made, be reported to the poor law commissioners by the clerk to the guardians.

*Art. 5.* No appointment to the office of superintendent shall be made under this order, unless notice that such appointment will be made shall have been given at one of the two ordinary meetings of the board of guardians next preceding the meeting at which the appointment shall be made, or unless an advertisement giving notice of such appointment shall have appeared in some public paper, by the direction of the guardians, at least seven days before the day on which such appointment shall be made.

*Art. 6.* The guardians shall pay to the superintendent, and his assistant or assistants, such salaries or remuneration as the poor law commissioners shall from time to time direct or approve; and the salary of every superintendent or assistant, appointed under this order, shall be payable up to the day on which he ceases to hold his office, and no longer.

*Art. 7.* Every person appointed to the office of superintendent of pauper labour under this order, shall continue to hold the same during the term for which he shall be appointed, until he shall die, or resign, or be removed by the poor law commissioners; but the guardians may, at their discretion, suspend from the discharge of his duties any such superintendent, and shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to the poor law commissioners for their decision thereon.

*Art. 8.* Every assistant appointed under this order may be dismissed by the guardians, without the consent of the poor law commissioners; but every such dismissal, and the grounds thereof, shall be reported to the poor law commissioners.

*Art. 9.* If any superintendent appointed under this order be at any time prevented by sickness or accident, or other sufficient reason, from the performance of his duties, the guardians may appoint a fit person to act as his temporary substitute, and may pay him a reasonable compensation for his services; and every such appointment shall be reported to the poor law commissioners by the clerk to the guardians, as soon as the same shall have been made.

**Art. 10.** When any superintendent under this order shall die or resign, the guardians shall, as soon as conveniently may be after such death or resignation, give notice thereof to the poor law commissioners, and shall proceed to make a new appointment in the manner prescribed by the above regulations.

**Art. 11.** Provided always, that the regulations in Art. 1 shall not apply in the case of any able-bodied male pauper who shall come within any of the following descriptions ; that is to say :—

- 1st. Where such pauper shall receive relief on account of sudden or urgent necessity.
- 2nd. Where such pauper shall receive relief on account of any sickness, accident, or bodily or mental infirmity, affecting such pauper or any of his family.
- 3rd. Where such pauper shall receive relief for the purpose of defraying the expenses, either wholly or in part, of the burial of any of his family.
- 4th. Where such pauper shall be confined in any gaol or place of safe custody.
- 5th. Where any able-bodied male person shall not reside within the union, but the wife, child, or children of such person shall reside within the same, the guardians may afford relief to such wife, child, or children, according to their discretion.

**Art. 12.** In every case in which the guardians or any of their officers may allow relief on account of sickness, accident, or infirmity, to any able-bodied male person, or to any member of the family of any able-bodied male person, without setting such person to work, according to the directions in Art. 1, an extract from the Medical Officer's Weekly Report (if any such officer shall have attended the case), stating the nature of such sickness, accident, or infirmity, shall be specially entered in the minutes of the proceedings of the guardians of the day on which the relief is ordered or subsequently allowed.

But, if the guardians shall think fit, a certificate under the hand of a medical officer of the union, or of the medical practitioner in attendance on the party on account of whose sickness, accident, or infirmity, relief shall be allowed, shall be laid before the board, stating the nature of such sickness, accident, or infirmity, and a copy of the same shall be in like manner entered in the minutes.

**Art. 13.** It shall not be lawful for the guardians of the union, or any of their officers, or for any overseer of any parish in the union, to pay the rent wholly or in part of any pauper : provided always, that nothing in this Article contained shall apply to any shelter or temporary lodging pro-

cured in any case of sudden and urgent necessity or mental imbecility.

*Art. 14.* If the guardians of the union shall depart in any particular instance from any of the regulations hereinbefore contained, and shall, within fifteen days after such departure, report the same and the grounds thereof to the poor law commissioners, and if the poor law commissioners shall approve of such departure, then the relief granted in such particular instance shall, if otherwise lawful, not be deemed to be unlawful, or be subject to be disallowed.

*Art. 15.* No relief which shall be contrary to any regulation in this order shall be given by way of loan; and every relief which may be given to or on account of any person above the age of twenty-one, or to his wife, or any part of his family under the age of sixteen, under Arts. 1, 11, or 12, may, if the guardians shall think fit, be given by way of loan.

*Relief to Married Women.]* By stat. 7 & 8 Vict. c. 101, s. 25, so long as it may appear that the husband of any woman is beyond the seas, or in custody of the law, or in confinement in a licensed house or asylum as a lunatic or idiot, all relief given to such woman, or to her child or children, shall, notwithstanding her coverture, be given to such woman in the same manner, and subject to the same conditions, as if she were a widow; but nothing herein contained shall diminish or affect the obligations or liabilities of such husband in respect of such relief.

*Relief to Widows.]* By stat. 7 & 8 Vict. c. 101, s. 26, it is enacted, that in the case of any person, being a widow, having a legitimate child dependent on her for support, and no illegitimate child born after the commencement of her widowhood, and who at the time of her husband's death was resident with him in some place other than the parish of her legal settlement, and not situated in any union in which such parish is comprised, it shall be lawful for the guardians of such parish or union, if they see fit, to grant relief to such widow, although not residing in such parish or union; provided always, that notwithstanding anything herein contained, the guardians of any union or parish, and the overseers of any parish, in which such widow may be resident or may require relief, shall be and remain liable to relieve such widow, in the same manner as any other person requiring relief in such union or parish.

*Relief to the Families of absent Seamen.]* Whenever during the absence of any seaman on a voyage, his wife, children, and step-children, or any of them, become or becomes charge-

able to any union or parish in the United Kingdom, such union or parish shall be entitled to be reimbursed out of the wages of such seaman earned during such voyage any sums properly expended during his absence in the maintenance of his said relations, or any of them, so that such sums do not exceed the following proportions of his said wages ; (that is to say,)

1st. If only one of such relations is chargeable, one half of such wages :

2nd. If two or more of such relations are chargeable, two-thirds of such wages :

But if during the absence of the seaman any sums have been paid by the owner to or on behalf of any such relation as aforesaid, under an allotment note given by the seaman in his, her, or their favour, any such claim for reimbursement as aforesaid shall be limited to the excess (if any) of the proportion of the wages hereinbefore mentioned over the sums so paid. 17 & 18 Vict. c. 104, s. 192.

For the purpose of obtaining such reimbursement as aforesaid, the guardians of the union or parish, where the relief of the poor is administered by guardians, and the overseers of the poor of any other parish in England, and the guardians or other persons having the authority of guardians in any union in Ireland, and the inspector of the poor in Scotland, may give to the owner of the ship in which the seaman is serving a notice in writing stating the proportion of the seaman's wages upon which it is intended to make the claim, and requiring the owner to retain such proportion in his hands for a period to be therein mentioned, not exceeding twenty-one days from the time of the seaman's return to his port of discharge, and also requiring such owner immediately on such return to give to such guardians, overseers, persons, or inspector notice in writing of such return ; and such owner, after receiving such notice as aforesaid, shall be bound to retain the said proportion of wages, and to give notice of the seaman's return accordingly, and shall likewise give to the seaman notice of the intended claim ; and the said guardians, overseers, persons, or inspector may upon the seaman's return apply in a summary way in England or Ireland to any two justices having jurisdiction in such union or parish as aforesaid, and in Scotland to the sheriff of the county, for an order for such reimbursements as aforesaid ; and such justices or sheriff may hear the case, and may make an order for such reimbursement to the whole extent aforesaid, to such lesser amount as they or he may under the circumstances think fit ; and the owner shall pay to such guardians, overseers, persons, or inspector, out of the seaman's wages, the amount so ordered to be paid by way of reimbursement, and shall pay the remainder of the said wages to the seaman ; and if no such order as aforesaid is obtained within the period mentioned in the

notice so to be given to the owner as aforesaid, the proportion of wages so to be retained by him as aforesaid shall immediately on the expiration of such period, and without deduction, be payable to the seaman. *Id.* s. 193.

*Relief to casual poor.]* By stat. 11 & 12 Vict. c. 110, s. 2, where any poor person having a fixed place of abode in a parish in any union formed under the provisions of stat. 4 & 5 W. 4, c. 76, shall hereafter, by reason of accident, bodily casualty or sudden illness occurring to him while in some other parish, in which he has no legal settlement, require relief,—the cost of all the relief given by lawful authority in that behalf, as well medical as otherwise, shall, if the poor person be at the time in receipt of relief, be paid or reimbursed in like manner and by the same union or parish as any other relief shall be then payable,—but if he be not then in receipt of relief, it shall be paid or reimbursed, as the case may require, by the parish in which such poor person shall then have his place of abode,—unless by reason of any provision of the law he would, if otherwise chargeable, have been chargeable to the common fund of such union, in which case the payment of reimbursement shall be made by the guardians of the union comprising such parish, and shall be charged to the common fund of the union; and it shall be lawful for the guardians of any union, if they think proper, to pay for any medical or other assistance which shall be rendered to any poor person on the happening of any accident, bodily casualty, or sudden illness, although no order shall have been given for the same by them or any of their officers, or by the overseers, and to charge the same to some one parish in the union, or to the common fund of the union, according as such parish or union would have been liable for the ordinary relief of such poor person;—provided that nothing herein contained shall exempt the guardians of the union or parish, or their officers, or the overseers of the parish in which such poor person shall require relief by reason of such accident, bodily casualty, or sudden illness, from their liability to supply the requisite relief to such poor person whilst in such union or parish.

*Their duty as to non-settled and non-resident poor.]* By the consolidated order of the poor law commissioners, 24th July, 1847, Art. 77, if any board of guardians undertake to administer relief allowed to a non-settled pauper living within the union for which they act, on behalf of the officers, or of the board of guardians, of the parish or union in which such pauper is deemed to be settled, every such undertaking shall be made in conformity with the rules and regulations of the commissioners in force at the time.

*Art. 78.* No money shall be transmitted to any guardians



or to any officer of a parish or union, to be applied to the relief of any non-resident pauper, except in conformity with the provisions of this order.

*Art. 79.* No money shall be paid on account of any non-resident pauper to the guardians or to the officer of any union or parish in which the relief is administered by a board of guardians, except in one of the three following ways:—

No. 1. By post-office order payable to the treasurer of the union or parish to the account of which the money is to be paid, or to the banker of such treasurer.

No. 2. By cheque or order payable to the treasurer of such parish or union, or to his order.

No. 3. By cheque payable to bearer (where the same may lawfully be drawn), and crossed as payable through the treasurer of such parish or union, or his banker, or through the agent of such treasurer or banker; and every such cheque shall be so crossed by the clerk before it is signed by the presiding chairman.

*Art. 80.* Every account for relief duly administered to non-resident poor, shall be discharged by the guardians within two calendar months from the receipt of such account, by the transmission of the amount due, in one of the modes prescribed in *Art. 70.*

*Their duty in maintaining the poor out of the union fund.]* By stat. 11 & 12 Vict. c. 110, s. 1, the cost of the relief to be given to any poor person chargeable or becoming chargeable in any union formed or to be formed under the provisions of the stat. 4 & 5 W. 4, c. 76, being a destitute wayfarer or wanderer or foundling, as well as the cost of the burial of the body of any such person dying within such union, shall be chargeable to the common fund of such union.

And by stat. 11 & 12 Vict. c. 110, s. 3, it is enacted that for a time limited (which time has been from time to time extended by subsequent Acts of parliament), all the costs incurred in the relief, as well medical as otherwise, of any poor person, who, not being settled in the parish where he resides, shall, by reason of some provision of stat. 9 & 10 Vict. c. 66, be or become exempted from the liability to be removed from the parish where he resides, shall, where the said parish shall be comprised in any such union as aforesaid, be charged to the common fund of such union, so long as such person shall continue to be so exempted: and the expenses of the burial of any such person so exempted at the time of his death shall, if legally payable by the guardians of the union, likewise be charged to the said common fund.

And where in any such union a question shall arise between any parishes therein, or between the guardians and any parish or parishes therein, with reference to the charging of the cost

of his relief, as to whether any pauper be so exempted as aforesaid, the parties may jointly submit such question to the poor law board, who may thereupon, if they think proper, entertain such question, and by an order under their seal determine the same; but no such order shall be liable to be removed, by writ of *certiorari* or otherwise, into the court of Queen's Bench, after the expiration of the term next ensuing the time when the copy thereof shall have been sent to the guardians, nor shall the same be quashed for any defect of form therein; and every such order not rescinded or quashed shall be in all courts and for all purposes final and conclusive between the guardians and every parish in the union interested in the matter. *Id.* s. 4.

Also all the costs and expenses incurred, or hereafter to be incurred, in and about the obtaining any order of justices for the removal and maintenance of a lunatic pauper who shall have been or shall be removed under any such order to any asylum, licensed house, or registered hospital, and who, if not a lunatic, would have been exempt from removal by reason of some provision in stat. 9 & 10 Vict. c. 66, shall be borne by the common fund of the union comprising the parish wherein such pauper lunatic was resident at the time when such lunatic pauper was so removed to such asylum, licensed house, or registered hospital, notwithstanding the order for the payment thereof shall have been made upon the overseers of such parish, or the parish of the settlement, or upon the treasurer or guardians of the union in which either parish shall be comprised. 12 & 13 Vict. c. 103, s. 5.

And the cost of all the relief, which under the provisions of this Act, shall be chargeable to the common fund of any union, shall be charged to the common fund of such union, in the same manner as union expenses are directed to be charged by stat. 4 & 5 W. 4, c. 76. 11 & 12 Vict. c. 110, s. 6.

*Their duty as to burying paupers.]* It shall be lawful for guardians, or where there are no guardians, for the overseers, to bury the body of any poor person which may be within their parish or union respectively, and to charge the expenses thereof to any parish under their control to which such person may have been chargeable, or in which he may have died, or otherwise in which such body may be; and unless the guardians, in compliance with the desire expressed by such person in his lifetime, or by any of his relations, or for any other cause, direct the body of such poor person to be buried in the churchyard or burial ground of the parish to which such person has been chargeable (which they are hereby authorized to do), every dead body which the guardians or any of their officers duly authorized shall direct to be buried at the expense of the poor rates, shall (unless the deceased person, or the husband

or wife or next of kin of such deceased person, have otherwise desired), be buried in the churchyard or other consecrated burial ground in or belonging to the parish, division of parish, chapelry, or place in which the death may have occurred [or if that be closed or overcrowded, in the burial ground of a neighbouring parish (18 & 19 Vict. c. 79, s. 1), or in the burial ground of any cemetery company or burial board with whom they may have agreed for the purpose (*Id.* s. 2)]; and in all cases of burial under the direction of the guardians or overseers as aforesaid, the fee or fees payable by the custom of the place in which the burial may take place, or under the provisions of any Act of parliament, shall be paid out of the poor rates, for the burial of each such body, to the person or persons who by such custom or under such Act may be entitled to receive any fee: provided always, that it shall not be lawful for any officer connected with the relief of the poor, to receive any money for the burial of the body of any poor person which may be within the parish, division of parish, chapelry, or place in which the death may have occurred, or to act as undertaker for personal gain or reward in the burial of any such body, or to receive any money from any dissecting school or school of anatomy, or hospital, or from any person or persons to whom any such body may be delivered, or to derive any personal emolument whatever for or in respect of the burial or disposal of any such body; and any such officer offending as aforesaid shall, on conviction thereof before any two justices, forfeit and pay a sum not exceeding five pounds. 7 & 8 Vict. c. 101, s. 31.

In the case of a destitute wayfarer, or wanderer, or foundling, dying in a union, the costs of burial are to be charged to the common fund of the union. 11 & 12 Vict. c. 110, s. 1; 12 & 13 Vict. c. 103, s. 1.

#### GOVERNMENT OF THE WORKHOUSE.

*Admission of paupers*, 155.  
*Classification of paupers*, 156.  
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*Punishment for misbehaviour of paupers*, 162.  
*Visiting committee*, 165.  
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By the consolidated order of the 24th July, 1847, Art. 152, the commissioners declare, that, subject to the rules and regulations contained in that order, the guidance, government, and control of every workhouse, and of the officers, servants, assistants, and paupers within such workhouse, shall be exercised by the guardians of the union—i. e., by the guardians acting as a board. By s. 38 of 4 & 5 W. 4,

c. 76, no guardian, except as therein excepted, shall have power to act in virtue of his office, except as a member and at a meeting of the board.

The rules and regulations for the government of the workhouse are contained in the following articles of the consolidated order.

*Admission of Paupers.*

**Art. 88.** Every pauper who shall be admitted into the workhouse, either upon his first or any subsequent admission, shall be admitted in some one of the following modes only, that is to say :—

By a written or printed order of the board of guardians, signed by their clerk according to Art. 42.

By a provisional written or printed order, signed by a relieving officer or an overseer.

By the master of the workhouse (or during his absence, or inability to act, by the matron), without any order, in any case of sudden or urgent necessity.

Provided that the master may admit any pauper delivered at the workhouse under an order of removal to a parish in the union.

**Art. 89.** No pauper shall be admitted under any written or printed order, as mentioned in Art. 88, if the same bear date more than six days before the pauper presents it at the workhouse.

**Art. 90.** If a pauper be admitted otherwise than by an order of the board of guardians, the admission of such pauper shall be brought before the board of guardians at their next ordinary meeting, who shall decide on the propriety of the pauper's continuing in the workhouse or otherwise, and make an order accordingly.

**Art. 91.** As soon the pauper is admitted, he shall be placed in some room to be appropriated to the reception of paupers on admission, and shall then be examined by the medical officer.

**Art. 92.** If the medical officer, upon such examination, pronounce the pauper to be labouring under any disease of body or mind, the pauper shall be placed in the sick ward, or in such other ward as the medical officer shall direct.

**Art. 93.** If the medical officer pronounce the pauper to be free from any such disease, the pauper shall be placed in the part of the workhouse assigned to the class to which he may belong.

**Art. 94.** No pauper shall be detained in a receiving ward for a longer time than is necessary for carrying into effect the regulations in Arts. 91, 92, and 93, if there be room in the proper ward for his reception.

**Art. 95.** Before being removed from the receiving ward, the pauper shall be thoroughly cleansed, and shall be clothed in a workhouse dress, and the clothes which he wore at the time of his admission shall be purified, and deposited in a place appropriated for that purpose, with the pauper's name affixed thereto. Such clothes shall be restored to the pauper when he leaves the workhouse.

**Art. 96.** Every pauper shall, upon his admission into the workhouse, be searched by or under the inspection of the proper officer, and all articles prohibited by any Act of parliament, or by this order, which may be found upon his person, shall be taken from him, and, so far as may be proper, restored to him at his departure from the workhouse.

The following are examples of prohibited articles :—

1. Spirituous or fermented liquors (Poor Law Amendment Act, ss. 91-94).
2. Articles of food not allowed by the dietary. (Art. 107.)
3. Letters or printed papers, having an improper tendency. (Art. 119.)
4. Cards or dice. (Art. 120.)
5. Matches, or highly combustible articles. (Art. 121.)

**Art. 97.** Provided always, that the regulations respecting the admission, clothing, and searching of paupers shall not apply to any casual poor wayfarer, unless the guardians shall so direct, or unless he is compelled to remain in the workhouse from illness or other sufficient cause, in which case he shall be admitted regularly as an inmate.

### *Classification of the Paupers.*

**Art. 98.** The paupers, so far as the workhouse admits thereof, shall be classed as follows :—

Class 1. Men infirm through age or any other cause.

Class 2. Able-bodied men, and youths above the age of fifteen years.

Class 3. Boys above the age of seven years, and under that of fifteen.

Class 4. Women infirm through age, or any other cause.

Class 5. Able-bodied women, and girls above the age of fifteen years.

Class 6. Girls above the age of seven years, and under that of fifteen.

Class 7. Children under seven years of age.

To each class shall be assigned that ward or separate building and yard which may be best fitted for the reception of such class, and each class of paupers shall remain therein, without communication with those of any other class.

**Art. 99.** Provided,

Firstly.—That the guardians shall from time to time, after

- consulting the medical officer, make such arrangements as they may deem necessary with regard to persons labouring under any disease of body or mind.
- Secondly.**—The guardians shall, so far as circumstances will permit, further subdivide any of the classes enumerated in Art. 98, with reference to the moral character, or behaviour, or the previous habits of the inmates, or to such other grounds as may seem expedient.
- Thirdly.**—That nothing in this order shall compel the guardians to separate any married couple, being both paupers of the first and fourth classes respectively, provided the guardians shall set apart for the exclusive use of every such couple a sleeping apartment separate from that of the other paupers.
- Fourthly.**—That any paupers of the fifth and sixth classes may be employed constantly or occasionally in any of the female sick wards, or in the care of infants, or as assistants in the household work; and the master and matron shall make such arrangements as may enable the paupers of the fifth and sixth classes to be employed in the household work, without communication with the paupers of the second and third classes.
- Fifthly.**—That any pauper of the fourth class, whom the master may deem fit to perform any of the duties of a nurse or assistant to the matron, may be so employed in the sick wards, or those of the fourth, fifth, sixth, or seventh classes, and any pauper of the first class, who may by the master be deemed fit, may be placed in the ward of the third class, to aid in the management, and superintend the behaviour, of the paupers of such class, or may be employed in the male sick ward.
- Sixthly.**—That the guardians, for a special reason to be entered on their minutes, may place any boy or girl between the ages of ten and sixteen years, in a male or female ward respectively different from that to which he or she properly belongs, unless the commissioners shall otherwise direct.
- Seventhly.**—That the paupers of the seventh class may be placed in such of the wards appropriated to the female paupers as shall be deemed expedient, and the mothers of such paupers shall be permitted to have access to them at all reasonable times.
- Eighthly.**—That the master (subject to any directions given or regulations made by the guardians) shall allow the father or mother of any child in the same workhouse, who may be desirous of seeing such child, to have an interview with such child at some one time in each day, in a room in the said workhouse to be appointed for that purpose. And the guardians shall make arrangements for permitting

the members of the same family who may be in different workhouses of the union to have occasional interviews with each other, at such times, and in such manner, as may best suit the discipline of the several workhouses.

**Ninthly.**—That casual poor wayfarers admitted by the master or matron, shall be kept in a separate ward of the workhouse, and shall be dieted and set to work in such manner and under such regulations as the guardians by any resolution now in force, or to be made hereafter, may direct.

**Art. 100.**—The guardians shall not admit into the workhouse, or any ward of the same, or retain therein, a larger number or a different class of paupers than that heretofore or hereafter from time to time to be fixed by the commissioners; and in case such number shall at any time be exceeded, the fact of such excess shall be forthwith reported to the commissioners by the clerk.

**Art. 101.**—No pauper of unsound mind, who may be dangerous, or who may have been reported as such by the medical officer, or who may require habitual or frequent restraint, shall be detained in the workhouse for any period exceeding fourteen days, and the guardians shall cause the proper steps to be taken for the removal of every such pauper to some asylum or licensed house as soon as may be practicable.

### *Discipline and Diet of the Paupers.*

**Art. 102.** All the paupers in the workhouse, except the sick and insane, and the paupers of the first, fourth, and seventh classes shall rise, be set to work, leave off work, and go to bed at the times mentioned in the Form (N.) hereunto annexed, and shall be allowed such intervals for their meals as are therein stated, and these several times shall be notified by the ringing of a bell; provided always, that the guardians may, with the consent of the commissioners, make such alterations in any of the said times or intervals, as the guardians may think fit.

The following is the Form (N.) referred to in Article 102.

	Time of Rising.	Intervals for Breakfast.	Time for Work.	Interval for Dinner.	Time for Work.	Interval for Supper.	Time for going to Bed.
From 25th March } to 29th Sept.... }	$\frac{1}{2}$ before 6 {	From $\frac{1}{2}$ past 6 to 7	From 7 to 12	From 12 to 1	From 1 to 6	From 6 to 7	} 8 o'clock
From 29th Sept. } to 25th March.. }	$\frac{1}{2}$ before 7 {	From $\frac{1}{2}$ past 7 to 8	From 8 to 12	From 12 to 1	From 1 to 6	From 6 to 7	} 8 o'clock

**Art. 103.** Half an hour after the bell shall have been rung for rising, the names of the paupers shall be called over by the master and matron respectively, in the several wards provided for the second, third, fifth, and sixth classes, when every pauper, belonging to the respective wards, shall be present, and shall answer to his name, and be inspected by the master and matron respectively, provided that the paupers of the third and sixth class may be called over and inspected by the schoolmaster and schoolmistress.

**Art. 104.** The meals shall be taken by all the paupers, except the sick, the children, persons of unsound mind, casual poor wayfarers, women suckling their children, and the paupers of the first and fourth classes, in the dining-hall or day-room, and in no other place whatever, and during the time of meals order and decorum shall be maintained.

**Art. 105.** No pauper of the second, third, fifth, or sixth classes shall go to, or remain in his sleeping-room, either in the time hereby appointed for work, or in the intervals allowed for meals, except by permission of the master or matron.

**Art. 106.** The master and matron shall (subject to the directions of the guardians) fix the hours of rising and going to bed for the paupers of the first, fourth, and seventh classes, and determine the occupation and employment of which they may be capable; and the meals for such paupers shall be provided at such times and in such manner as the guardians may from time to time direct.

**Art. 107.** The paupers shall be dieted with the food and in the manner set forth in the dietary table which may be prescribed for the use of the workhouse, and no pauper shall have or consume any liquor, or any food or provision other than is allowed in the said dietary table, except on Christmas Day or by the direction in writing of the medical officer, as provided in Article 108.

**Art. 108.** Provided,

**First.** That the medical officer may direct in writing such diet for any individual pauper as he may deem necessary, and the master shall obey such directions until the next ordinary meeting of the guardians, when he shall report the same in writing to the guardians.

**Secondly.** That if the medical officer at any time certify that he deems a temporary change in the diet essential to the health of the paupers in the workhouse, or of any class or classes thereof, the guardians shall cause a copy of such certificate to be entered on the minutes of their proceedings, and may forthwith order, by a resolution, the said diet to be temporarily changed, according to the recommendation of the medical officer, and shall forthwith transmit a copy of such certificate and resolution to the commissioners.



**Thirdly.** That the medical officer shall be consulted by the matron as to the nature of the food of the infants, and of their mothers when suckling, and the time at which such infants should be weaned.

**Fourthly.** That the guardians may, without any direction of the medical officer, make such allowance of food as may be necessary to paupers employed as nurses or in the household work; but they shall not allow to such paupers any fermented or spirituous liquors on account of the performance of such work, unless in pursuance of a written recommendation of the medical officer.

**Art. 109.** If any pauper require the master or matron to weigh the allowance of provisions served out at any meal, the master or matron shall forthwith weigh such allowance in the presence of the pauper complaining, and of two other persons.

**Art. 110.** The clothing to be worn by the paupers in the workhouse shall be made of such materials as the board of guardians may determine.

**Art. 111.** More than two paupers, any one of whom is above the age of seven years, shall not be allowed to occupy the same bed, unless in the case of a mother and infant children.

**Art. 112.** The paupers of the several classes shall be kept employed according to their capacity and ability; and no pauper shall receive any compensation for his labour.

**Art. 113.** No pauper in the workhouse shall be employed or set to work in pounding, grinding, or otherwise breaking bones, or in preparing bone dust.

**Art. 114.** The boys and girls who are inmates of the workhouse shall, for three of the working hours at least, every day, be instructed in reading, writing, arithmetic, and the principles of the Christian religion, and such other instruction shall be imparted to them as may fit them for service, and train them to habits of usefulness, industry, and virtue.

**Art. 115.** Any pauper may quit the workhouse upon giving to the master, or (during his absence or inability to act) to the matron, a reasonable notice of his wish to do so; and in the event of any able-bodied pauper, having a family, so quitting the house, the whole of such family shall be sent with him, unless the guardians shall, for any special reason, otherwise direct; and such directions shall be in conformity with the regulations of the commissioners with respect to relief in force at the time.

**Art. 115** further provides that when any able-bodied pauper, having a family, quits the house, the whole of such family shall be sent with him or her, unless the board of guardians shall for any special reason otherwise direct.

**Art. 116.** Provided nevertheless, that the guardians may, by any general or special direction, authorize the master to allow a pauper, without giving any such notice as is required in Art. 115, to quit the workhouse, and to return after a temporary absence only; and every such allowance shall be reported by the master to the guardians at their next ordinary meeting.

**Art. 117.** Provided also, that nothing herein contained shall prevent the master from allowing the paupers of each sex under the age of fifteen, subject to such restrictions as the guardians may impose, to quit the workhouse, under the care and guidance of himself, or the matron, schoolmaster, schoolmistress, porter, or some one of the assistants and servants of the workhouse, for the purpose of exercise.

**Art. 118.** Any person may visit any pauper in the workhouse by permission of the master, or (in his absence) of the matron, subject to such conditions and restrictions as the guardians may prescribe; such interview shall take place in a room separate from the other inmates of the workhouse, and in the presence of the master, matron, or porter, except where a sick pauper is visited.

**Art. 119.** No written or printed paper of an improper tendency, or which may be likely to produce insubordination, shall be allowed to circulate, or be read aloud, among the inmates of the workhouse.

By Art. 214, No. 4, it is the duty of the porter to prevent the admission into the workhouse of any letter or printed paper falling within the prohibition in Art. 119.

**Art. 120.** No pauper shall play at cards, or at any game of chance, in the workhouse; and the master may take from any pauper, and keep until his departure from the workhouse, any cards, dice, or other articles applicable to games of chance, which may be in his possession.

**Art. 121.** No pauper shall smoke in any room of the workhouse, except by the special direction of the medical officer, or shall have any matches or other articles of a highly combustible nature in his possession, and the master may take from any person any article of such a nature.

**Art. 122.** Any licensed minister of the religious persuasion of an inmate of the workhouse, who may at any time of the day, on the request of any inmate, enter the workhouse for the purpose of affording religious assistance to him, or for the purpose of instructing his child or children in the principles of his religion, shall give such assistance or instruction, so as not to interfere with the good order and discipline of the other inmates of the workhouse; and such religious assistance or instruction shall be strictly confined to inmates who are of the religious persuasion of such minister, and to the children of such inmates, except in the cases in which the guardians may lawfully permit religious assistance and instruction to be

given to any paupers who are protestant dissenters, by licensed ministers who are protestant dissenters.

**Art. 123.** No work, except the necessary household work and cooking, shall be performed by the paupers on Sunday, Good Friday, and Christmas Day.

**Art. 124.** Prayers shall be read before breakfast and after supper every day, and divine service shall be performed every Sunday, Good Friday, and Christmas Day in the workhouse (unless the guardians, with the consent of the commissioners, otherwise direct), and at such prayers and divine service all the paupers shall attend, except the sick, persons of unsound mind, the young children, and such as are too infirm to do so; provided that those paupers who may object so to attend, on account of their professing religious principles differing from those of the established church, shall also be exempt from attendance.

**Art. 125.** The guardians may authorize any inmates of the workhouse, being members of the established church, to attend public worship at a parish church or chapel, on every Sunday, Good Friday, and Christmas Day, under the control and inspection of the master or porter, or other officer.

**Art. 126.** The guardians may also authorize any inmates of the workhouse, being dissenters from the established church, to attend public worship at any dissenting chapel in the neighbourhood of the workhouse, on every Sunday, Good Friday, and Christmas Day.

#### *Punishments for Misbehaviour of the Paupers.*

**Art. 127.** Any pauper, being an inmate of the workhouse, who shall neglect to observe such of the regulations in this order as are applicable to him as such inmate;

Or who shall make any noise when silence is ordered to be kept;

Or shall use obscene or profane language;

Or shall by word or deed insult or revile any person;

Or shall threaten to strike or to assault any person;

Or shall not duly cleanse his person;

Or shall refuse or neglect to work, after having been required to do so;

Or shall pretend sickness;

Or shall play at cards or other game of chance;

Or shall refuse to go into his proper ward or yard, or shall enter or attempt to enter, without permission, the ward or yard appropriated to any class of paupers other than that to which he belongs;

Or shall climb over any fence or boundary wall surrounding any portion of the workhouse premises, or shall attempt to leave the workhouse otherwise than through the ordinary entrance;

Or shall misbehave in going to, at, or returning from public worship out of the workhouse, or at divine service or prayers in the workhouse ;

Or, having received temporary leave of absence, and wearing the workhouse clothes, shall return to the workhouse after the appointed time of absence, without reasonable cause for the delay ;

Or shall wilfully disobey any lawful order of any officer of the workhouse ;

Shall be deemed **DISORDERLY**.

*Art. 128.* Any pauper, being an inmate of the workhouse, who shall, within seven days, repeat any one, or commit more than one, of the offences specified in Art. 127 ;

Or who shall by word or deed insult or revile the master or matron, or any other officer of the workhouse, or any of the guardians ;

Or shall wilfully disobey any lawful order of the master or matron, after such order shall have been repeated ;

Or shall unlawfully strike or otherwise unlawfully assault any person ;

Or shall wilfully or mischievously damage or soil any property whatsoever belonging to the guardians ;

Or shall wilfully waste or spoil any provisions, stock, tools, or materials for work, belonging to the guardians ;

Or shall be drunk ;

Or shall act or write indecently or obscenely ;

Or shall wilfully disturb other persons at public worship out of the workhouse, or at divine service or prayers in the workhouse ;

Shall be deemed **REFRACTORY**.

*Art. 129.* The master may, with or without the direction of the guardians, punish any disorderly pauper by substituting, during a time not greater than forty-eight hours, for his dinner, as prescribed by the dietary, a meal consisting of eight ounces of bread, or one pound of cooked potatoes or boiled rice, and also by withholding from him, during the same period, all butter, cheese, tea, sugar, or broth, which such pauper would otherwise receive, at any meal during the time aforesaid.

*Art. 130.* The guardians may, by a special direction, to be entered on their minutes, order any refractory pauper to be punished by confinement in a separate room, with or without an alteration of diet, similar in kind and duration to that prescribed in Article 129 for disorderly paupers ; but no pauper shall be so confined for a longer period than twenty-four hours ; or if it be deemed right that such pauper should be carried before a justice of the peace, and if such period of twenty-four hours should be insufficient for that purpose, then for such further time as may be necessary for such purpose.

**Art. 131.** If any offence, whereby a pauper becomes refractory under Art. 128, be accompanied by any of the following circumstances of aggravation, (that is to say,) if such pauper

Persist in using violence against any person ;

Or persist in creating a noise or disturbance, so as to annoy other inmates ;

Or endeavour to excite other paupers to acts of insubordination ;

Or persist in acting indecently or obscenely in the presence of any other inmate ;

Or persist in mischievously breaking or damaging any goods or property of the guardians ;

the master may, without any direction of the guardians, immediately place such refractory pauper in confinement for any time not exceeding twelve hours ; which confinement shall, however, be reckoned as part of any punishment afterwards imposed by the guardians for the same offence.

**Art. 132.** Every refractory pauper shall be deemed to be also disorderly, and may be punished as such ; but no pauper who may have been punished for any offence as disorderly, shall afterwards be punished for the same offence as refractory, and no pauper who may have been punished for any offence as refractory, shall afterwards be punished for the same offence as disorderly.

**Art. 133.** No pauper shall be punished by confinement or alteration in diet for any offence not committed in the work-house since his last admission, except in such cases as are expressly specified in Arts. 127 and 128.

**Art. 134.** No pauper who may have been under medical care, or who may have been entered in the medical weekly return as sick or infirm, at any time in the course of the seven days next preceding the punishment, or who may be reasonably supposed to be under twelve or above sixty years of age, or who may be pronounced by the medical officer to be pregnant, or who may be suckling a child, shall be punished by alteration of diet, or by confinement, unless the medical officer shall have previously certified in writing that no injury to the health of such pauper is reasonably to be apprehended from the proposed punishment ; and any modification diminishing such punishment which the medical officer may suggest, shall be adopted by the master.

**Art. 135.** No pauper shall be confined between eight o'clock in the evening and six o'clock in the morning, without being furnished with a bed and bedding suitable to the season, and with the other proper conveniences.

**Art. 136.** No child under twelve years of age shall be punished by confinement in a dark room, or during the night.

**Art. 137.** No corporal punishment shall be inflicted on any male child, except by the schoolmaster or master.

**Art. 138.** No corporal punishment shall be inflicted on any female child.

**Art. 139.** No corporal punishment shall be inflicted on any male child, except with a rod or other instrument, such as may have been approved of by the guardians or the visiting committee

**Art. 140.** No corporal punishment shall be inflicted on any male child until two hours shall have elapsed from the commission of the offence for which such punishment is inflicted.

**Art. 141.** Whenever any male child is punished by corporal correction, the master and schoolmaster shall (if possible) be both present.

**Art. 142.** No male child shall be punished by flogging whose age may be reasonably supposed to exceed fourteen years.

**Art. 143.** The master shall keep a book, to be furnished him by the guardians, in which he shall duly enter,

**Firstly.**—All cases of refractory or disorderly paupers, whether children or adults, reported to the guardians, for their decision thereon.

**Secondly.**—All cases of paupers, whether children or adults, who may have been punished without the direction of the guardians, with the particulars of their respective offences and punishments.

**Art. 144.** The person who punishes any child with corporal correction shall forthwith report to the master the particulars of the offence and punishment; and the master shall enter the same in the book specified in Art. 143.

**Art. 145.** Such book shall be laid on the table at every ordinary meeting of the guardians, and every entry made in such book since the last ordinary meeting shall be read to the board by the clerk.

**Art. 146.** If any pauper above the age of fourteen years unlawfully introduce or attempt to introduce any spirituous or fermented liquor into the workhouse, or abscond from the workhouse with clothes belonging to the guardians, the master may cause such pauper to be forthwith taken before a justice of the peace, to be dealt with according to law. And whether he do so or not, he shall report every such case to the guardians at their next ordinary meeting.

**Art. 147.** The master shall cause a legible copy of Arts. 127, 128, 129, 130, and 131, to be kept suspended in the dining-hall of the workhouse, or in the room in which the inmates usually eat their meals and also in the board-room of the guardians.

*Visiting Committee.*

**Art. 148.** The guardians shall appoint one or more *Visiting Committees* from their own body; and each of such com-

mittees shall carefully examine the workhouse or workhouses of the union once in every week at the least, inspect the last reports of the chaplain and medical officer, examine the stores, afford, so far as is practicable, to the inmates an opportunity of making any complaints, and investigate any complaints that may be made to them.

**Art. 149.** The visiting committee shall from time to time write such answers as the facts may warrant to the following queries, which are to be printed in a book, entitled the "Visitors' Book," to be provided by the guardians, and kept in every workhouse for that purpose, and to be submitted regularly to the guardians at their ordinary meetings:—

- Q. 1.** Is the workhouse, with its wards, offices, yards, and appurtenances, clean and well ventilated in every part?—and is the bedding in proper order?—if not, state the defect or omission.
- Q. 2.** Do the inmates of the workhouse, of all classes, appear clean in their persons, and decent and orderly in their behaviour; and is their clothing regularly changed?
- Q. 3.** Are the inmates of each sex employed and kept at work as directed by the guardians, and is such work unobjectionable in its nature?—if any improvement can be suggested in their employment, state the same.
- Q. 4.** Are the infirm of each sex properly attended to, according to their several conditions?
- Q. 5.** Are the boys and girls in the school properly instructed as required by the regulations of the commissioners, and is their industrial training properly attended to?
- Q. 6.** Are the young children properly nursed and taken care of, and do they appear in a clean and healthy state?—Is there any child not vaccinated?
- Q. 7.** Is regular attendance given by the medical officer?—Are the inmates of the sick wards properly tended?—Are the nurses efficient?—Is there any infectious disease in the workhouse?
- Q. 8.** Is there any dangerous lunatic or idiot in the workhouse?
- Q. 9.** Is divine service regularly performed?—Are prayers regularly read?
- Q. 10.** Is the established dietary duly observed?—and are the prescribed hours of meals regularly adhered to?
- Q. 11.** Are the provisions and other supplies of the qualities contracted for?
- Q. 12.** Is the classification properly observed, according to Arts. 98 and 99?
- Q. 13.** Is any complaint made by any pauper against any officer, or in respect of the provisions or accommodations

—If so, state the name of the complainant, and the subject of the complaint.

Q. 14. Does the present number of inmates in the workhouse exceed that fixed by the poor law commissioners?

*Repairs and Alterations of the Workhouse.*

**Art. 150.** The guardians shall once at least in every year, and as often as may be necessary for cleanliness, cause all the rooms, wards, offices, and privies belonging to the workhouse to be limewashed.

**Art. 151.** The guardians shall cause the workhouse and all its furniture and appurtenances to be kept in good and substantial repair; and shall, from time to time, remedy without delay any such defect in the repair of the house, its drainage, warmth, or ventilation, or in the furniture or fixtures thereof, as may tend to injure the health of the inmates.

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*The lunatics who may be sent.]* The lunatics who may be sent to a lunatic asylum by order of justices, in pursuance of stat. 8 & 9 Vict. c. 126, are either lunatics chargeable to the parish from which they are sent,—or wandering lunatics,



—or lunatics who are not chargeable, but who are neglected or ill-treated by their friends. In this order I shall now notice them.

*Chargeable lunatics.*] In order that it may be known what lunatics are chargeable to a parish, and that proper measures may be taken for their care or cure, it is enacted by stat. 8 & 9 Vict. c. 126, s. 47, that the clerk of the board of guardians of every parish and union under a board of guardians, and the overseers of every parish not under a board of guardians, shall, on the first day of January in every year, or as soon after as may be, make out and sign a true and faithful list of all lunatics chargeable to the parish or union, in the form in schedule (D.) hereunto annexed,—and shall, on or before the first day of February next succeeding, lay one copy of such list before the visitors of the asylum of the county in which such union or parish is situate,—and shall transmit one copy of such list to the clerk of the peace of the county, or the clerk of the justices of the borough within which the parish to which each such lunatic is chargeable is situated, to be by him laid before the justices acting for such county at their next general or quarter sessions, or before the justices of the borough,—another copy of such list to the commissioners in lunacy,—and another copy thereof to the poor law commissioners. 8 & 9 Vict. c. 126, s. 47.

Also, by sect. 48, the medical officer of every parish and union who shall have knowledge that any person chargeable to such parish, or to any parish within such union, is or is deemed to be a lunatic, shall, within three days after obtaining such knowledge, give notice thereof in writing to the overseers of the poor of the parish, if the parish be not within a union, and to the relieving officer of the union if the parish be within a union;—and every such overseer and relieving officer who shall have knowledge, either by such notice or otherwise, that any person chargeable to the parish of such overseer, or to any parish within the union of such relieving officer, is deemed to be lunatic, shall, within three days after obtaining such knowledge, give notice thereof to some justice of the county or borough within which such parish is situate;—and thereupon the said justice shall, by an order under his hand and seal, require the overseer or relieving officer of the parish or union to bring such person before him or some other justice of the said county or borough, at such time and place, within three days from the time of such notice being given to such justice, as shall be appointed by the said order. *Id.* s. 48. And if he neglect to do so, he is liable to a penalty of 10*l.* *Id.* s. 50.

The overseer accordingly takes the lunatic before the justice, and he, after calling to his assistance a physician, surgeon, or apothecary, and examining the lunatic, makes an order to

convey him to the lunatic asylum of the county or borough, of which he is a justice, or if there be no such asylum, or there be no room for him in it, he makes an order to convey him to some private licensed asylum. *Id.* s. 48. But if, from the state of his health or other cause, the lunatic cannot be taken before the justice, he may be examined at his abode or elsewhere by one justice,—or by an officiating clergyman of the parish, and one of the overseers or the relieving officer of the union in which the parish is comprised,—and such justice, or such clergyman and overseer, or relieving officer, calling to their assistance a physician, surgeon, or apothecary, may make the order.

By virtue of that order, the overseers, or some careful persons employed by them, must convey the lunatic to the asylum, and deliver him into the custody of the superintendent or keeper, together with the order.

*Wandering lunatics.]* Every overseer or relieving officer of a parish or union, who shall have knowledge that any person, wandering within his district, parish, or union, is deemed to be a lunatic, shall immediately apprehend or take, or cause such person to be apprehended or taken, before a justice (8 & 9 Vict. c. 126, s. 49); or if he fail to do so, he is subject to a penalty of ten pounds. *Id.* s. 50. Or if, on account of his health, or other cause, the lunatic cannot be taken before a justice, he may be examined at his abode or elsewhere by a justice. *Id.* s. 49. And such justice calling to his assistance a physician, surgeon, or apothecary, makes an order that he be conveyed to a lunatic asylum, as above mentioned, and the overseer has him conveyed and left there, together with the order, accordingly.

*Lunatics not chargeable when neglected or ill-treated by their friends.]* Every overseer or relieving officer of a parish or union, who shall have knowledge that any person within his district, parish, or union, not being chargeable to any parish, is deemed to be a lunatic, and is under the care of a relative, or other person, who neglects, or cruelly treats him, so that he is not properly taken care of, such overseer or relieving officer shall, within three days after obtaining such knowledge, give notice thereof to some justice of the county or borough within which such district, parish, or union is situate (8 & 9 Vict. c. 126, s. 49); otherwise he is liable to a penalty of ten pounds. *Id.* s. 50.

The justice then orders the overseer or relieving officer to bring the lunatic before him, and some other justice of the same county, &c.; and when the lunatic is brought before them, the two justices, calling to their assistance a physician, surgeon, or apothecary, and one of the overseers or the reliev-

ing officer, make an order for conveying the lunatic to the asylum (*Id.* s. 45) ; where he is conveyed and left, accordingly, by the overseer.

*Expenses provided for.]* The expenses of obtaining the order, conveying the lunatic to the asylum, and maintaining him there, must be paid in the first instance by the parish, &c., from which he is sent ; and, in the case of a wandering lunatic, if at the time he was apprehended, he was chargeable to some other parish, such other parish shall reimburse the removing parish for the expenses they have incurred. *Id.* ss. 49, 57, 61.

If it be found that the lunatic has property, such property, by an order of justices, may be applied to the reimbursement of the expenses already incurred, and to the maintenance of the lunatic in the asylum for the future. See *Arch. Lun.* 24-30. Or if he have any relation able to maintain him, an order may be made upon such relation. *Id.* p. 30. Or if he have a settlement in another parish, two justices may adjudicate his settlement, and make an order upon such parish, not only for the amount of the expenses already incurred, but also for a weekly sum to be paid to the proprietor or treasurer of the lunatic asylum, in which the lunatic is placed. *Id.* pp. 31-47. Or if his place of settlement cannot be ascertained, two justices upon application may adjudge him to be chargeable to the county, and make an order upon the treasurer for the expenses already incurred, and for payment of a weekly sum to the asylum until the settlement shall be discovered. *Id.* p. 50. If however the lunatic had resided five years in the removing parish, before he was conveyed to the asylum, then if such parish be in a union, as well the expenses of the order and of the removal, as the expense of maintaining him in the asylum, must be paid out of the union fund, no matter where he is settled. *Id.*

All this should be fully investigated by the overseers, and the rights and liabilities of their parish fully ascertained, in order that they may be reimbursed the expenses they have incurred in respect of the lunatic, if their parish be not liable by law to bear them. The whole law upon the subject, the law and practice in appeals against lunatic orders, and the law as to criminal lunatics and lunatics likely to commit offences, will be found in Archbold's "*Law relative to Pauper Lunatics.*"

*Annual returns of pauper lunatics.]* The clerk of every board of guardians,—and the overseers of every parish not in a union, nor under a board of guardians,—shall, on the first day of January in every year, or as soon after as may be, make out and sign a true and faithful list of all lunatics

chargeable to the union or parish,—and shall, on or before the first day of February next succeeding, lay one copy of such list before the visitors of the asylum, or before the visitors of each asylum (if more than one) of the county or borough in which such union or parish is situate,—and transmit one copy of such list to the clerk of the peace of the county, or the clerk to the justices of the borough within which the union or parish to which each such lunatic is chargeable is situate, to be by him laid before the justices acting for such county at their next general or quarter sessions, or before the justices of such borough,—and another copy of such list to the commissioners in lunacy,—and another copy thereof to the poor law board; and any such clerk or overseer neglecting to make out and sign such list, or to transmit copies thereof, as herein directed, shall, for every such offence, forfeit any sum not exceeding twenty pounds. 16 & 17 Vict. c. 97, s. 64.

*Pauper patients confined in asylums to be visited by guardians.]* Any physician, surgeon, or apothecary to be appointed by the guardians of any union or parish or the overseers of any parish,—and also the guardians of any union or parish,—and the overseers of any parish,—shall be permitted, whenever they see fit, between the hours of eight in the morning and six in the evening, to visit and examine any or every pauper lunatic chargeable to such union or parish confined in any asylum, registered hospital, or licensed house: provided always, that if the medical officer of any asylum be of opinion that it will be injurious to any lunatic to permit such visit and examination, and such medical officer state in writing the reasons why such lunatic should not be visited and examined, and sign such statement, and deliver the same to the person or persons so requiring to visit and examine such lunatic, then and in such case it shall be lawful for such medical officer to refuse such visit and examination; and in every such case such medical officer shall forthwith enter in the medical journal the reasons set forth in such statement for such refusal, and shall sign such entry. *Id.* s. 65.

*Visitation of pauper lunatics not in asylums.]* Every pauper lunatic not in an asylum, or a hospital registered or house licensed for the reception of lunatics, shall be visited once in every quarter of a year (reckoning the several quarters of the year as ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December), by the medical officer of or for the parish or union, or district of a parish or union, in which such lunatic is resident; who is to be paid the sum of two shillings and sixpence for each such quarterly visit to any

pauper not being in a workhouse, which sum is to be paid by the same persons, and be charged to the same account as the relief of such pauper ;—and within seven days after the end of every such quarter, such medical officer shall prepare and sign a list of all such lunatics, and shall state therein whether in the opinion of such medical officer all or any of such lunatics are or are not properly taken care of, and may or may not properly remain out of an asylum ; and such medical officer shall, within the time aforesaid, deliver or send such list to the clerk to the guardians of such parish or union, or, if such parish be not under a board of guardians, to one of the overseers thereof ; and the forms for such lists shall be from time to time furnished to the medical officer of every parish under a board of guardians, and to the medical officers of every union, by the guardians of such parish or union ; but nothing in this enactment shall be taken or construed to relieve any medical officer from any obligation by this Act imposed upon him to give notice to a relieving officer or overseer, where it appears to such medical officer that any pauper lunatic ought to be sent to an asylum ;—and such clerk or overseer receiving any such list as aforesaid shall, within three days after the receipt thereof, transmit the same to the commissioners in lunacy, and a copy thereof to the clerk to the visitors of the asylum for the county or borough in which the parish or union for which he is clerk or overseer is situate ;—and every such medical officer, clerk, or overseer failing to comply with this enactment shall, for every such offence, forfeit any sum not exceeding twenty pounds nor under two pounds. *Id.* s. 66.

*Provision for sending pauper lunatics to asylums.]* Every medical officer of a parish or union who shall have knowledge that any pauper resident in such parish, or in any parish within the district of such medical officer, is or is deemed to be a lunatic, and a proper person to be sent to an asylum, shall, within three days after obtaining such knowledge, give notice thereof in writing to a relieving officer of such parish, or if there is no relieving officer then to one of the overseers of such parish,—and every relieving officer of any parish within a union or under a board of guardians, and every overseer of a parish of which there is no relieving officer, who shall have knowledge, either by such notice or otherwise, that any pauper resident in such parish is or is deemed to be a lunatic, and a proper person to be sent to an asylum, shall within three days after obtaining such knowledge, give notice thereof to some justice of the county or borough within which such parish is situate.

And thereupon the said justice shall, by an order under his hand and seal, require such relieving officer or overseer to

bring such pauper before him, or some other justice of the said county or borough, at such time and place within three days from the time of such notice being given to such justice, as shall be appointed by the said order.

And the said justice before whom such pauper shall be brought shall call to his assistance a physician, surgeon, or apothecary, and examine such person; and if such physician, surgeon, or apothecary shall sign a certificate with respect to such pauper, and such justice be satisfied, upon view, or personal examination of such pauper, or other proof, that such pauper is a lunatic, and a proper person to be taken charge of and detained under care and treatment, he shall, by an order under his hand, direct such pauper to be received into such asylum as hereinafter mentioned, or where hereinafter authorized in this behalf, into some hospital registered or some house duly licensed for the reception of lunatics.

And such relieving officer or overseer shall immediately convey, or cause the said lunatic to be conveyed, to such asylum, hospital, or house, and such lunatic shall be received and detained therein.

Provided always, that it shall be lawful for any justice, upon notice being given to him as aforesaid, or upon his own knowledge, without any such notice as aforesaid, to examine any pauper deemed to be a lunatic at his own abode or elsewhere, and to proceed in all respects as if such pauper were brought before him in pursuance of an order for that purpose.

Provided also that in case any pauper deemed to be lunatic cannot, on account of his health or other cause, be conveniently taken before any justice, such pauper may be examined at his own abode or elsewhere by an officiating clergyman of the parish in which he is resident, together with a relieving officer, or, if there be no relieving officer, an overseer of such parish, and such officiating clergyman, together with such relieving officer or overseer, shall call to their assistance a physician, surgeon, or apothecary; and if such physician, surgeon, or apothecary shall sign a certificate with respect to such pauper, and if upon view or examination of such pauper such officiating clergyman and such relieving officer or overseer be satisfied that such pauper is a lunatic, and a proper person to be taken charge of and detained under care and treatment, such officiating clergyman, together with such overseer or relieving officer, shall, by an order under their hands, direct such pauper to be received into such asylum as hereinafter mentioned, or, where hereinafter authorized in this behalf, into some such registered hospital or licensed house as aforesaid, and such relieving officer or overseer shall immediately convey or cause such pauper to be conveyed to such asylum, hospital, or house, and such pauper shall be received and detained therein.

Provided also, that if the physician, surgeon, or apothecary by whom any such pauper shall be examined, shall certify in writing that he is not in a fit state to be removed, his removal shall be suspended until the same or some other physician, surgeon, or apothecary shall certify in writing that he is fit to be removed; and every such physician, surgeon, and apothecary is required to give such last-mentioned certificate as soon as in his judgment it ought to be given.

Provided also, that where a certificate is signed by the medical officer of the parish or union in which the pauper named therein is resident, as well as by some other person being a physician, surgeon, or apothecary called to the assistance of the justice or clergyman, and overseer or relieving officer, as hereinbefore mentioned, such joint certificate, or such two certificates (as the case may be), shall be received by the justice or clergyman, and overseer or relieving officer, by whom such person is examined as hereinbefore mentioned, as conclusive evidence that the person named therein is a lunatic, and a proper person to be taken charge of and detained under care and treatment, and he or they shall make an order accordingly. *Id.* s. 67.

*Provision as to lunatics wandering at large, &c.]* Every constable,—and every relieving officer and overseer of any parish,—who shall have knowledge that any person wandering at large within such parish or place (whether or not such person be a pauper) is deemed to be a lunatic,—shall immediately apprehend and take or cause such person to be apprehended and taken before a justice.

And it shall also be lawful for any justice, upon its being made to appear to him by the information upon oath of any person whomsoever that any person wandering at large within the limits of his jurisdiction is deemed to be a lunatic, by an order under the hand and seal of such justice, to require any constable of the parish or place, or relieving officer or overseer of the parish where such person may be found, to apprehend him, and bring him before such justice, or some other justice having jurisdiction where such person may be found.

And every constable and every relieving officer and overseer, who shall have knowledge that any person not a pauper, and not wandering at large as aforesaid, is deemed to be a lunatic and is not under proper care and control,—or is cruelly treated or neglected by any relative or other person having the care or charge of him,—shall, within three days after obtaining such knowledge, give information thereof upon oath to a justice, and in case it be made to appear to any justice, upon such information or upon the information upon oath of any person whomsoever, that any person within the limits of his

jurisdiction not a pauper, and not wandering at large, is deemed to be a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, such justice shall, either himself visit and examine such person and make inquiry into the matter so appearing upon such information, —or by an order under his hand and seal direct and authorize some physician, surgeon, or apothecary to visit and examine such person, and make such inquiry, and to report in writing to such justice his opinion thereupon.

And in case upon such personal visit, examination, and inquiry by such justice, or upon the report of such physician, surgeon, or apothecary, it appear to such justice that such person is a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, it shall be lawful for such justice, by an order under his hand and seal, to require any constable of the parish or place, or any relieving officer or overseer of the parish, where such person is alleged to be, to bring him before any two justices of the same county or borough;—and the justice or justices (as the case may be) before whom any such person as aforesaid in the respective cases aforesaid is brought, under this enactment, shall call to his or their assistance a physician, surgeon, or apothecary, and shall examine such person, and make such inquiry relative to such person as he or they shall deem necessary.

And if upon examination of such person or other proof such justice be satisfied that such person so brought before him is a lunatic, and was wandering at large, and is a proper person to be taken charge of and detained under care and treatment, —or such two justices be satisfied that such person so brought before them is a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any person having the care or charge of him, and that he is a proper person to be taken charge of and detained under care and treatment,—and if such physician, surgeon, or apothecary sign a certificate with respect to every such person so brought either before one justice or two justices,—it shall be lawful for the said justice or justices, by an order under his or their hand and seal or hands and seals, to direct such person to be received into such asylum as hereinafter mentioned, or, where hereinafter authorized in this behalf, into some hospital registered or house licensed for the reception of lunatics,—and the said constable, relieving officer, or overseer who may have brought such person before the said justice or justices, or any constable, whom such justice or justices may require so to do, shall forthwith convey such person to such asylum, hospital, or house accordingly.

Provided always, that it shall be lawful for any justice,



upon such information on oath as aforesaid, or upon his own knowledge, and alone, in the case of any such person as aforesaid wandering at large and deemed to be a lunatic, or with some other justice in any other of the cases aforesaid, to examine the person deemed to be a lunatic at his own abode or elsewhere, and to proceed in all respects as if such person were brought before him or them as hereinbefore mentioned.

Provided also, that it shall be lawful for the said justice or justices to suspend the execution of any such order for removing any such person as aforesaid to any asylum, hospital, or house, for such period not exceeding fourteen days as he or they may deem meet, and in the meantime to give such directions or make such arrangements for the proper care and control of such person as he or they shall consider necessary.

Provided also, that if the physician, surgeon, or apothecary by whom such person is examined certify in writing that he is not in a fit state to be removed, the removal of such person shall be suspended until the same or some other physician, surgeon, or apothecary certify in writing that such person is fit to be removed; and every such physician, surgeon, and apothecary is hereby required to give such last-mentioned certificate as soon as in his judgment it ought to be given.

Provided also, that nothing herein contained shall be construed to extend to restrain or prevent any relation or friend from retaining or taking such lunatic under his own care, if such relation or friend shall satisfy the justice or justices before whom such lunatic shall be brought, or the visitors of the asylum in which such lunatic is or is intended to be placed, that such lunatic will be properly taken care of. *Id.* s. 68.

*Payment of fees to physicians, &c.]* The justices causing any person to be examined by any physician, surgeon, or apothecary, if they think fit so to do, may make an order upon the guardians of the union or parish or the overseers of the parish to which such person is chargeable for the payment of such reasonable remuneration to any such physician, &c., for the examination of such person, and of all other reasonable expenses in or about the examination of such person, and the bringing him before such justice or justices, and in case he be ordered to be conveyed to any asylum, registered hospital, or licensed house, of conveying him thereto, as to such justice or justices may seem proper. *Id.* s. 69.

*Penalties.]* If any medical officer omit for more than three days after obtaining knowledge of any pauper, resident in such parish, or in any parish within his district, being or being

deemed to be lunatic, and a proper person to be sent to an asylum, to give such notice thereof as is hereinbefore required;

Or if any relieving officer of any parish, or any overseer of any parish of which there is no relieving officer, omit for more than three days after obtaining knowledge of any pauper resident in such parish being deemed to be a lunatic, and a proper person to be sent to an asylum, to give notice thereof to a justice, as hereinbefore required;

Or if any constable, relieving officer, or overseer omit to apprehend and take before a justice, as hereinbefore required, any person wandering at large and deemed to be a lunatic,—or omit for three days after obtaining knowledge that any person deemed to be a lunatic (not a pauper, and not wandering at large) is not under proper care and control, or is cruelly treated or neglected by any person having the care or charge of him, to give information thereof to a justice as hereinbefore required;—

Such medical officer, relieving officer, overseer, or constable, as the case may be, shall for every such offence forfeit any sum not exceeding ten pounds. *Id.* s. 70.

And if any relieving officer, overseer, or constable, required to convey any person to any asylum, registered hospital, or licensed house, refuse or wilfully neglect to execute the order with all reasonable expedition, he shall for every such offence forfeit any sum not exceeding ten pounds. *Id.* s. 71.

*Orders of justices, &c., extend to authorize reception into hospitals, &c.]* Every order by a justice or justices, or by a clergyman and overseer or relieving officer as aforesaid, for the reception of a lunatic into an asylum, may authorize his admission, not only into any lunatic asylum of the county or borough in which the parish or place from which the lunatic is sent is situate,—but also into any other asylum for the reception of pauper lunatics of such county or borough,—and also into any asylum for any other county or borough, or any hospital registered or house licensed for the reception of lunatics;—but lunatics to be always sent to asylums, if circumstances permit;—but every lunatic shall, under every such order, be sent to an asylum of the county or borough in which the parish or place from which he is sent is situate, unless there be no such asylum, or there be a deficiency of room, or unless there be some special circumstances by reason whereof such lunatic cannot be conveniently taken to such asylum, which deficiency of room or special circumstances shall be stated in the order for the reception of such lunatic into any asylum other than such asylum as aforesaid, or into any registered hospital or licensed house;—and no lunatic shall be sent to any registered hospital or house licensed for the

reception of lunatics, by virtue of such order, except there be no such asylum, or no such asylum in which he can be received, or there be some special circumstances, by reason whereof he cannot be taken thereto, which shall be stated in like manner as aforesaid. *Id.* s. 72.

*No pauper to be received into any asylum without a certain order and certificate.]* No pauper shall be received into any asylum, registered hospital, or licensed house (save under the provisions herein contained with respect to removal of lunatics), without an order under the hands of one justice,—or under the hands of an officiating clergyman, and of one of the overseers or the relieving officer of the parish or union from which such pauper is sent as aforesaid,—together with a statement of particulars,—nor without a medical certificate signed by one physician, surgeon, or apothecary, who shall have personally examined him not more than seven clear days previously to his reception; and every person who receives any pauper into any asylum without such order and medical certificate (save under any of the said provisions) shall be guilty of a misdemeanor. *Id.* s. 73.

*Medical certificate to specify facts upon which opinion of insanity has been formed.]* Every physician, surgeon, and apothecary signing any certificate under or for the purposes of this Act, shall specify therein the facts upon which he has formed his opinion that the person to whom such certificate relates is a lunatic, an idiot, or a person of unsound mind, distinguishing in such certificate facts observed by himself from facts communicated to him by others; and no person shall be received into any asylum under any certificate which purports to be founded only upon facts communicated by others. *Id.* s. 75.

*Provision as to ordering removal of pauper lunatics to or from asylum.]* Any two of the visitors of any asylum, being justices, by an order in writing, under their hands and seals, may order any pauper lunatic,—chargeable to any parish or union within the county or borough, or any county or borough, to which such asylum wholly or in part belongs,—or to such county,—and who may be confined in any other asylum, or in any registered hospital or licensed house,—to be removed to such first-mentioned asylum;—and it shall be lawful for any two of the visitors of any asylum, being justices, in manner aforesaid to order any pauper lunatic to be removed from such asylum to some other asylum, or to some registered hospital or licensed house.

But no such lunatic shall be removed as last aforesaid, without the consent in writing of two of the commissioners in

lunacy, except to an asylum within or belonging wholly or in part to the county within which the asylum from which the lunatic is removed is situate, or the county in some parish of which the lunatic may have been adjudged to be settled, or a registered hospital or licensed house within any such county as aforesaid, or an asylum, registered hospital, or licensed house into which the lunatic can be received under a subsisting contract for the reception of lunatics therein.

And it shall be lawful for the justices making any such order, in and by the same, to direct or require any overseer or relieving or other officer of the parish, union, or county to which such lunatic is chargeable, or to authorize any other person, to execute the same.

And every such order and consent shall be made and given respectively in duplicate, and one duplicate shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house from which the patient is removed, and the other shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house to which the patient is removed, and such order, with such consent in writing (where such consent is required), shall be a sufficient authority for the removal of such patient, and also for his reception into the asylum, hospital, or licensed house to which he is ordered to be removed.

Provided always, that no person shall be removed under any such order without a medical certificate, signed by the medical officer of the asylum, or the medical practitioner, or one of the medical practitioners, keeping, residing in, or visiting the hospital or licensed house, from which such person is ordered to be removed, certifying that he is in a fit condition of bodily health to be removed in pursuance of such order; and the superintendent or proprietor of such asylum, hospital, or licensed house, shall, at the time of delivering the person ordered to be removed to the overseer, officer, or person having the execution of the order for removal, deliver to such overseer or officer, free of any charge for the same, the certificate of such medical officer, and also a copy (certified under the hand of such superintendent or proprietor to be a true copy) of the order and certificate under which such person was received into and detained in such asylum, hospital, or licensed house, and the said certificate and certified copies, with one duplicate of the order for removal, shall be delivered by such overseer, officer, or person to the superintendent or proprietor of the asylum, hospital, or licensed house to which such person is ordered to be removed, or any other officer of such asylum, hospital, or licensed house into whose care such person is delivered. *Id.* s. 77.

Provided always, that no lunatic being a pauper shall be received under any order into any asylum, other than an

asylum belonging wholly or in part to the county or borough in which the parish or place from which such lunatic is sent, or the parish in which he is adjudged to be settled is situate, except there be a subsisting contract for the reception of lunatics of such county or borough therein, or such borough otherwise contributes to such asylum, unless such order be endorsed by a visitor of such asylum; and it shall not be compulsory on the superintendent of any registered hospital or the proprietor of any licensed house to receive any lunatic under any such order, except in pursuance of any subsisting contract. *Id.* s. 68.

*Discharge of lunatics from asylum.]* It shall be lawful for any three of the visitors of any asylum, by writing under their hands and seals, to order the discharge of any person detained in such asylum, whether such person be recovered or not,—and also for any two of such visitors, with the advice in writing of the medical officer of such asylum, to discharge any person detained therein,—or to permit any such person to be absent from the asylum upon trial, for such period as such visitors think fit; and it shall be lawful for such visitors to make such allowance to such last-mentioned person, not exceeding what would be the charge for such person if in the asylum, which allowance, and no greater sum, shall be charged for him, and be payable as if he were actually in the asylum; and in case any person so allowed to be absent on trial for any period do not return at the expiration of such period, and a medical certificate as to his state of mind, certifying that his detention in an asylum is no longer necessary, be not sent to the visitors, he may, at any time within fourteen days after the expiration of such period, be retaken, as herein provided in the case of an escape. *Id.* s. 69.

*Overseers and relieving officers to remove lunatics.]* When the visitors of any asylum shall order a pauper lunatic confined therein to be discharged therefrom, it shall be lawful for them, when they shall see occasion, to send notice in writing, signed by their clerk, through the post or otherwise, of their intention to discharge such lunatic, to the overseers of the parish wherein it shall have been adjudged that such lunatic is settled,—or, if no such adjudication shall have been made, to the overseers of the parish from which such lunatic shall have been sent to such asylum,—unless such lunatic shall be chargeable to the common fund of any union, and in any such last-mentioned case to some one relieving officer of such union;—and upon receipt of such notice, the overseers or relieving officers respectively shall cause such lunatic, upon his discharge, to be forthwith removed to their parish, or to the workhouse of the union, at the cost and charge of their parish

or of the common fund of the union, as the case shall require; and any overseer or relieving officer who shall refuse or wilfully neglect to remove such lunatic from the said asylum within the space of seven days after such notice shall have been sent to him, shall be guilty of an offence against this Act, and shall forfeit for such offence any sum not exceeding ten pounds, to be recovered as other penalties imposed by this Act are recoverable. *Id.* s. 70.

*Discharge of lunatic, on undertaking of a relative, &c. that he shall no longer be chargeable, and shall be taken care of.]* Where application is made to the committee of visitors of any asylum by any relative or friend of a pauper lunatic confined therein, requiring that he may be delivered over to the custody and care of such relative or friend, it shall be lawful for any two of the visitors aforesaid, if they think fit, and upon the undertaking in writing of such relative or friend to the satisfaction of such visitors that such lunatic shall be no longer chargeable to any union, parish, or county, and shall be properly taken care of, and shall be prevented from doing injury to himself or others, to discharge such lunatic. *Id.* s. 71.

*Commissioners in lunacy may order removal of lunatics.]* It shall be lawful for the commissioners in lunacy, or any two of them, by writing under their hands and seals, to order and direct the removal of any lunatic from any asylum, registered hospital, or licensed house to any asylum, registered hospital, or licensed house;—and every such order shall be made in duplicate, and one duplicate shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house from which the patient is removed, and the other shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house to which the patient is removed; and such order shall be a sufficient authority for the removal of such patient, and also for his reception into the asylum, hospital, or licensed house to which he is ordered to be removed. *Id.* s. 72.

*Notice of the death of a lunatic.]* In case of the death of any pauper patient in any asylum, a notice and statement of the death and cause of the death of such patient, and the name of any person or persons who was or were present at the death, shall be drawn up and signed by the clerk and medical officer of such asylum,—and a copy thereof shall be by the clerk transmitted to the registrar of deaths for the district—and to the commissioners in lunacy within forty-eight hours of the death of such patient,—and also to the relieving officer or the overseers of the union or parish to which such lunatic was chargeable. *Id.* s. 92.

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*How, where it appears that the lunatic has property applicable to his maintenance.]* Where any lunatic shall be sent to an asylum, registered hospital, or licensed house, under any order made by virtue of the authority hereinbefore given to two justices, if it appear to such justices that such lunatic hath an estate applicable to his maintenance, and more than sufficient to maintain his family (if any), it shall be lawful for such justices to make an application in writing under their hands and seals to the nearest known relative or friend of such lunatic, for the payment of the charges of the examination, removal, lodging, maintenance, clothing, medicine, and care of such lunatic ;—and in case such charges be not paid within one month after such application, it shall be lawful for the same or any other justices, by an order under their hands and seals, to direct a relieving officer or overseer of the parish from which such lunatic shall be sent, or where any property of such lunatic shall be, to seize so much of the money, and to seize and sell so much of the goods and chattels, and take and receive so much of the rents and profits of the lands and tenements of such lunatic, and of any other income of such lunatic, as may be necessary to pay the charges of the examination, removal, lodging, maintenance, clothing, medicine,

and care of such lunatic, accounting for the same to the same or any other justices, such charges having been first proved to the satisfaction of the said justices, and the amount set forth in such order.

And if any trustee or other person having the possession, custody, or charge of any property of such lunatic, or if the governor and company of the Bank of England, or any other body or person having in their or his hands any stock, interest, dividend, or annuity belonging or due to such lunatic, pay the whole or any part thereof to any overseer or relieving officer, to defray the charges set forth in such order, the receipt of such overseer or relieving officer shall be a good discharge to such trustee, governor, and company, or other body or person as aforesaid.

Provided always, that, notwithstanding it may appear to the said justices that such lunatic hath such estate as aforesaid, it shall be lawful for such justices, in the meantime and until such charges as aforesaid shall be paid, in pursuance of such application or order as aforesaid, to make an order on the guardians of the union or parish, or the overseers of the parish, from which such lunatic shall be sent for confinement, for payment of the charges of the removal, lodging, maintenance, clothing, medicine, and care of such lunatic; and such guardians or overseers shall be reimbursed such charges under any order to be made as aforesaid for payment of such charges, out of the property of the lunatic, unless the same be sooner repaid by some relative or friend of such lunatic, in pursuance of such application as aforesaid. *Id.* s. 94.

And further, if it appear to any justice or justices, by this Act authorized to make any order for the payment of money for the maintenance of any lunatic, that such lunatic has an estate, real or personal, applicable to his maintenance, and more than sufficient to maintain his family (if any), he or they shall, by an order under his or their hand and seal or hands and seals, direct—the overseers of the parish, or a relieving officer of the parish or union, or the treasurer or some other officer of the county, to which such lunatic is chargeable,—or in which any property of the lunatic may be,—or an officer of the asylum in which the lunatic may be,—to seize so much of any money,—and to seize and sell so much of the goods and chattels,—and to take and receive so much of the rents and profits of the lands and tenements of such lunatic and other income of such lunatic,—as may be necessary to pay the charges of the examination, bringing before a justice or justices, removal, lodging, maintenance, clothing, medicine, and care of such lunatic, accounting for the same to such justice or justices, such charges having been first proved to the satisfaction of such justice or justices, and the amount set forth in such order;—and if any trustee or other



person having the possession, custody, or charge of any property of such lunatic, or if the governor and company of the Bank of England, or any other body or person, having in their or his hands any stock, interest, dividend, or annuity belonging or due to such lunatic, pay any money according to any such order, or pay any money without any such order, to the guardians of any union or parish, or to any overseer of any parish not in a union or under a board of guardians, or to the treasurer of any county, or any other officer of any county authorized to receive the same, to defray the charges paid or incurred by or on behalf of such parish, union, or county for the examination, bringing before a justice or justices, removal, lodging, maintenance, clothing, medicine, and care of such lunatic, the receipt of the person authorized to receive such money under such order, or of such guardians, overseer, or treasurer, or other officer, shall be a good discharge to such trustee, governor, and company, or other body or person as aforesaid. *Id.* s. 104.

*To what parish chargeable.]* When any pauper lunatic is confined under the provisions of this Act, he shall, for the purposes of this Act, be chargeable to the parish from which, or at the instance of some officer or officiating clergyman of which, he has been sent,—unless and until such parish shall have established, under the provisions herein contained, that such lunatic is settled in some other parish,—or that it cannot be ascertained in what parish such lunatic is settled;—and every pauper lunatic who is chargeable to any parish shall, whilst he resides in an asylum, registered hospital, or licensed house, be deemed for the purposes of his settlement to be residing in the parish to which he is chargeable. *Id.* s. 95.

*Order for maintenance of lunatics.]* It shall be lawful for the justice, by whom any pauper lunatic is sent to an asylum, registered hospital, or licensed house under the powers of this Act,—or for any two justices of the county or borough in which the asylum, registered hospital, or licensed house in which any pauper lunatic is confined is situate,—or from any part of which any pauper lunatic has been sent,—or for any two justices being visitors of such asylum or licensed house,—to make an order upon the guardians of the union or parish, or the overseers of the parish (if not in a union or under a board of guardians), from which, or at the instance of any officer or officiating clergyman of which, such lunatic is or has been sent for confinement, for payment to the treasurer, officer, or proprietor of the asylum, registered hospital, or licensed house of the reasonable charges of the lodging, maintenance, medicine, clothing, and care of such lunatic in such asylum, hospital, or house,—and any such order may be retrospective

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or prospective, or partly retrospective and partly prospective;—and the guardians or overseers on whom such order shall be made, shall from time to time pay to the said treasurer, officer, or proprietor the charges aforesaid. *Id.* s. 96.

*Inquiry into and adjudgment of settlement of a lunatic, &c.]* It shall be lawful for any two justices for the county or borough in which any asylum, registered hospital, or licensed house, in which any pauper lunatic is or has been confined is situate,—or to which such asylum wholly or in part belongs,—or from any part of which any pauper lunatic is or has been sent for confinement,—at any time to inquire into the last legal settlement of such pauper lunatic, and if satisfactory evidence can be obtained as to such settlement in any parish, such justices shall, by order under their hands and seals, adjudge such settlement accordingly,—and order the guardians of the union to which the parish in which such lunatic is adjudged to be settled belongs,—or of such parish, in case such parish be in a union or be under a board of guardians,—and if not, then the overseers of such parish,—to pay to the guardians of any union or parish, or the overseers of any parish, all expenses incurred by or on behalf of such union or parish in or about the examination of such lunatic, and the bringing him before a justice or justices, and his conveyance to the asylum, hospital, or house,—and of all moneys paid by such last-mentioned guardians or overseers to the treasurer, officer, or proprietor of the asylum, hospital, or house, for the lodging, maintenance, medicine, clothing, and care of such lunatic, and incurred within twelve calendar months previous to the date of such order,—and, if such lunatic is still in confinement, also to pay to the treasurer, officer, or proprietor of the asylum, hospital, or house, the reasonable charges of the future lodging, maintenance, medicine, clothing and care of such lunatic.

And the guardians or overseers on whom any such order is made shall immediately pay to the guardians or overseers to whom the same are ordered to be paid, the amount of the expenses and monies by such order directed to be paid to them, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, hospital, or house the future charges aforesaid. *Id.* s. 97.

*How, if settlement cannot be ascertained.]* If any pauper lunatic be not settled in the parish by which, or at the instance of some officer or officiating clergyman of which, he is sent to any asylum, registered hospital, or licensed house,—and it cannot be ascertained in what parish such pauper lunatic is settled,—and if a relieving officer of such first-mentioned parish, or of the union in which the same is situate, or the

overseers of such first-mentioned parish, shall give ten days' notice to the clerk of the peace of the county in which such lunatic was found to appear for such county before two justices thereof, at a time and place to be appointed in such notice,—it shall be lawful for such two justices, or any two or more justices of such county, upon the appearance of such clerk of the peace, or any one on his behalf,—or, in case of his non-appearance, upon proof of his having been served with such notice,—to inquire into the circumstances of the case, and to adjudge such pauper lunatic to be chargeable to such county,—and to order the treasurer of such county to pay to the guardians of any union or parish or the overseers of any parish all expenses incurred by or on behalf of such union or parish in or about the examination of such lunatic, and the bringing him before a justice or justices, and his conveyance to the asylum, hospital, or house, and all monies paid by such guardians or overseers to the treasurer, officer, or proprietor of the asylum, hospital, or house, for the lodging, maintenance, medicine, clothing, and care of such lunatic, and incurred within twelve calendar months previous to the date of such order,—and (if such lunatic is still in confinement) also to pay to the treasurer, officer, or proprietor of the asylum, hospital, or house, the reasonable charges of the future lodging, maintenance, medicine, clothing, and care of such lunatic.

And every such treasurer of a county on whom any such order is made shall, out of any moneys which may come into his hands by virtue of his office, immediately pay to such guardians or overseers the amount of the expenses and moneys by such order directed to be paid to them, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, hospital, or house, the future charges aforesaid.

Provided always, that such justices may direct such inquiry to be made to ascertain the parish in which any pauper lunatic is settled as they think fit, and delay adjudging such pauper lunatic to be chargeable to any county until such further inquiry has been made.

Provided also, that every county to which any pauper lunatic is adjudged to be chargeable as aforesaid, may at any time thereafter inquire as to the parish in which such lunatic is settled, and may procure such lunatic to be adjudged to be settled in any parish. *Id.* s. 98.

*Reimbursement of county.]* If, after any pauper lunatic has been sent to an asylum, registered hospital, or licensed house, as aforesaid, and has been adjudged to be chargeable to a county, such county procure such lunatic to be adjudged to be settled in any parish,—it shall be lawful for any two justices of the county or borough in which the asylum, regis-

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tered hospital, or licensed house, in which such lunatic is confined is situate,—or from any part of which such lunatic was sent for confinement,—or for any two justices being visitors of such asylum or licensed house,—to make an order upon the guardians of the union to which such parish belongs, or of any such parish, if such parish be in a union or be under a board of guardians,—or if not, then upon the overseers of such parish,—for payment to the treasurer of the said county of all expenses and moneys paid by such treasurer as hereinbefore is provided,—and of all moneys paid by such treasurer to the treasurer, officer, or proprietor of the asylum, hospital, or house, for the lodging, maintenance, medicine, clothing, and care of such lunatic, and incurred within twelve calendar months previous to such order,—and (if such lunatic is still in confinement) also for payment to the treasurer or officer or proprietor of the asylum, hospital, or house, of the reasonable charges of the future lodging, maintenance, medicine, clothing, and care of such lunatic; and such guardians or overseers shall immediately pay to the treasurer of such county the amount of the expenses and moneys by such order directed to be paid to him, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, hospital, or house, the future charges aforesaid. *Id.* s. 99.

*Costs of pauper lunatics who are irremovable, how to be borne.]* Provided always, that all the expenses incurred, in and about the examination, bringing before a justice or justices, removal, lodging, maintenance, medicine, clothing, and care of a pauper lunatic heretofore or hereafter removed to an asylum, registered hospital, or licensed house, under the authority of this or any other Act,—who would, at the time of his being conveyed to such asylum, hospital, or house, have been exempt from removal to the parish of his settlement or the country of his birth, by reason of some provision in the Act of the session holden in the ninth and tenth years of Her Majesty, chapter sixty-six,—shall be paid by the guardians of the parish wherein such lunatic shall have acquired such exemption, if such parish be subject to a separate board of guardians,—or by the overseers of such parish where the same is not subject to such separate board,—and where such parish shall be comprised in any union the same shall be paid by the guardians, and be charged to the common fund of such union so long as the cost of the relief of paupers, rendered irremovable by the last-mentioned Act, shall continue to be chargeable upon the common funds of unions;—and no order shall be made under any provision contained in this or any other Act upon the parish of the settlement in respect of any such lunatic pauper during the time that the above-mentioned charges are to be paid and charged as herein provided. *Id.* s. 102.

*Guardians and overseers may pay charges without orders of justices.]* Provided also, that any guardians or overseers who would be liable to have an order made upon them for the payment of any money, may pay the same without any such order being made, and may charge the same to such account as they could have done if such order had been made. *Id.* s. 103.

*Liability of relations of lunatic.]* The liability of any relation or person to maintain any lunatic shall not be taken away or affected where such lunatic is sent to or confined in any asylum, registered hospital, or licensed house, by any provision herein contained concerning the maintenance of such lunatic. *Id.* s. 105.

*Sending copy of order of adjudication.]* The overseers of any parish,—and the guardians of any union or parish,—and the clerk of the peace of any county,—obtaining any order under this Act adjudging the settlement of any lunatic to be in any parish, shall, within a reasonable time after such order has been made, send or deliver, by post or otherwise, to the overseers or guardians of the parish in which such lunatic is adjudged to be settled, a copy or duplicate of such order,—and also a statement in writing under their or his hands or hand, or where they are the guardians of a union or parish, under the hands of any three or more of such guardians, stating the description and address of the overseers, guardians, or clerk of the peace obtaining such order,—and the place of confinement of the lunatic,—and setting forth the grounds of such adjudication, including the particulars of any settlement or settlements relied upon in support thereof;—and on the hearing of any appeal against any such order, it shall not be lawful for the respondents to go into or give evidence of any other grounds in support of such order than those set forth in such statement. *Id.* s. 107.

*Appeal against order of adjudication.]* If the guardians of any union or parish,—or the overseers of any parish,—feel aggrieved by any such order as aforesaid, adjudging the settlement of any lunatic,—they or he may appeal against the same to the next general quarter sessions of the peace for the county in behalf of which such order has been obtained,—or in which the union or parish obtaining such order is situate;—or in case such parish or union extend into several jurisdictions, then to the next general quarter sessions of the peace for the county or borough in which the asylum, registered hospital, or licensed house in which such lunatic is or has been confined is situate;—and such sessions upon hearing the said appeal shall have full power finally to determine the matter. *Id.* s. 108.

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*Copy of depositions to be furnished.]* The clerk to the justices making any order adjudging the settlement of any lunatic,—or the clerk of the peace in the case hereinafter provided for,—shall keep the depositions upon which such order was made, and shall within seven days furnish a copy of such depositions to any party authorized to appeal against such order, if such party apply for such copy, and pay for the same at the rate of twopence for every folio of seventy-two words;—provided that no omission or delay in furnishing such copy of the depositions shall be deemed or construed to be any ground of appeal against the order: provided also, that on the trial of any appeal against any such order, no such order shall be quashed or set aside, either wholly or in part, on the ground that such depositions do not furnish sufficient evidence to support, or that any matter therein contained or omitted raises an objection to the order, or grounds on which the same was made:—provided also, that if the justices who make any such order have not any clerk, they shall send or deliver the depositions to the clerk of the peace of the county or borough to the general quarter sessions whereof the appeal against such order is given by this Act, and the party obtaining such order shall, in such statement of grounds of adjudication as aforesaid, state that such justices have not any clerk. *Id.* s. 109.

*Notice of appeal to be given.]* No appeal shall be allowed against any such order, if notice in writing of such appeal be not sent or delivered by post or otherwise to the party on whose application the order was obtained, within the space of twenty-one days after the sending or delivery, as hereinbefore directed, of a copy or duplicate of such order and such statement as hereinbefore mentioned,—unless within such period of twenty-one days a copy of the depositions shall have been applied for as aforesaid by the party attending to appeal, in which case a further period of fourteen days after the sending of such copy, shall be allowed for the giving of such notice of appeal. *Id.* s. 110.

*Grounds of appeal.]* In every case where notice of appeal against such order is given, the appellant shall,—with such notice, of fourteen days at least before the first day of the sessions at which such appeal is intended to be tried,—send or deliver by post or otherwise to the respondent a statement in writing under their or his hands or hand,—or where the appellants are the guardians of any union or parish, under the hands of any three or more of such guardians,—of the grounds of such appeal; and it shall not be lawful for the appellant on the hearing of any appeal to go into or give evidence of any other grounds of appeal than those set forth in such statement. *Id.* s. 111.

Upon the hearing of any appeal against any such order, no objection whatever on account of any defect in the form of setting forth any ground of adjudication or appeal in any such statement shall be allowed,—and no objection to the reception of legal evidence offered in support of any such ground alleged to be set forth in any such statement shall prevail—unless the court be of opinion that such alleged ground is so imperfectly or incorrectly set forth, as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial.

*Power to amend statement.]* Provided always, that in all cases where the court is of opinion that any such objection to such statement or to the reception of evidence ought to prevail, it shall be lawful for such court, if it so think fit, to cause any such statement to be forthwith amended by some officer of the court, or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions, or to the next subsequent sessions, or both payment of costs and postponement, as to such court appears just and reasonable. *Id.* s. 112.

*Power to amend order.]* If upon the trial of any appeal against any such order,—or upon the return to a writ of *certiorari*,—any objection be made on account of any omission or mistake in the drawing up of such order, and it be shown to the satisfaction of the court that sufficient grounds were in proof before the justices making such order to have authorized the drawing up thereof free from the said omission or mistake,—it shall be lawful for the court, upon such terms as to payment of costs as it thinks fit, to amend such order and to give judgment as if no such omission or mistake had existed :—provided always, that no objection on account of any omission or mistake in any such order brought up upon a return to a writ of *certiorari* shall be allowed, unless such omission or mistake have been specified in the rule for issuing such writ of *certiorari*. *Id.* s. 113.

*Frivolous or vexatious statements.]* If either of the parties to the said appeal shall have included in the statement of grounds of adjudication or of appeal sent to the opposite party, any ground or grounds in support of the order or of appeal, which, in the opinion of the court determining the appeal, is or are frivolous and vexatious,—such party shall be liable, at the discretion of the said court, to pay the whole or any part of the costs incurred by the other party in disputing any such ground or grounds. *Id.* s. 114.

*Costs.]* Upon every such appeal, the court before whom the same is brought shall and may, if they think fit, order and

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direct the party against which the same is decided to pay to the other such costs and charges as may to such court appear just and reasonable, and shall certify the amount thereof. *Id.* s. 115.

*Decisions to be final.]* The decision of the court upon the hearing of any appeal against any such order, as well upon the sufficiency and effect of the statement of the grounds in support of the order and appeal, and of the copy or duplicate of the order sent to the appellant parish or county, as upon the amending or refusing to amend the order as aforesaid, or the statement of grounds, shall be final, and shall not be liable to be reviewed in any court by means of a writ of *certiorari*, or *mandamus*, or otherwise. *Id.* s. 116.

*Abandonment of orders.]* In any case in which an order has been made as aforesaid, and a copy or duplicate thereof sent as herein required, it shall and may be lawful for the party who has obtained such order,—whether any notice of appeal against such order has or has not been given,—and whether any appeal has or has not been entered—to abandon such order, by notice in writing under the hand or hands of such party,—or, where such order has been obtained by the guardians of any union, under the hands of any three or more of such guardians,—to be sent by post or delivered to the appellant or the party entitled to appeal,—and thereupon the said order and all proceedings consequent thereon, shall become and be null and void to all intents and purposes as if the same had not been made, and shall not be in any way given in evidence, in case any other order for the same purposes shall be obtained:—provided always, that in all cases of such abandonment, the party so abandoning shall pay to the appellant or the party entitled to appeal, the costs which he has incurred by reason of such order, and of all subsequent proceedings thereon; which costs the proper officer of the court before whom any such appeal (if it had not been abandoned) might have been brought, shall, upon application, tax and ascertain at any time, whether the court be sitting or not, upon production to him of such notice of abandonment, and upon proof to him that such reasonable notice of taxation, together with a copy of the bill of costs, has been given to the overseers, guardians, or clerk of the peace abandoning such order, as the distance between the parties shall in his judgment require;—and thereupon the sum allowed for costs, including the usual costs of taxation, which such officer is hereby empowered to charge and receive, shall be endorsed upon the said notice of abandonment, and the said notice so endorsed shall be filed among the records of the said court.



*Access to lunatic in cases of appeal.]* In every case of an inquiry, investigation, dispute, or appeal, as to the parish in which a pauper lunatic is settled, the guardians, clerks of the guardians, relieving officers, and overseers of every union including any parish, or of any parish (which parish respectively is interested in such inquiry, investigation, dispute, or appeal), and every person duly authorized by them respectively,—and the clerk of the peace of any county interested in such inquiry, investigation, dispute, or appeal, and every person duly authorized by such clerk of the peace—shall at all reasonable times be allowed free access, in the presence of the medical attendant, to the lunatic, to examine him as to the premises. *Id.* s. 119.

*Expenses of burial.]* On the death, discharge, or removal of any pauper from any asylum, registered hospital, or licensed house, the necessary expenses attending the burial, discharge, or removal of such pauper shall be borne by the union or parish (if any) to which such pauper is chargeable, as hereinbefore provided,—or if such pauper be chargeable to a county as hereinbefore provided, then by such county,—and shall be paid by the guardians of such union or parish,—or by the overseers of such parish if not in a union or under a board of guardians, or by the treasurer of such county. *Id.* s. 120.

*Recovery of money ordered to be paid.]* If any overseer, or any treasurer of any county, upon whom any order of justices for the payment of money under the provisions of this Act or of any Act hereby repealed is made, shall refuse or neglect for the space of twenty days next after due notice of such order to pay the money so ordered to be paid, the said money, together with the expenses of recovering the same, shall be recovered by distress and sale of the goods of the overseer or treasurer so refusing or neglecting, by warrant under the hands and seals of any two justices hereby authorized to make the order for payment of the money aforesaid,—or by an action at law,—or by any other proceeding in any court of competent jurisdiction against such overseer or treasurer ;—and if the guardians upon whom any such order is made refuse or neglect for such time as aforesaid to pay the money so ordered to be paid, the same, together with the expenses of recovering the same, may be recovered by an action at law, or by any other proceeding in any such court ; and in case of any such action or proceeding no objection shall be taken to any default or want of form in any order of admission or maintenance, or in any certificate or adjudication under this Act, if such order or adjudication shall not have been appealed against, or, if appealed against, shall have been affirmed. *Id.* s. 121.

*Their duty in enabling the Poor to Emigrate.*

By stat. 4 & 5 W. 4, c. 76, s. 62, it shall and may be lawful for the ratepayers in any parish, and such of the owners of property therein as shall, in manner herein mentioned, have required their names to be entered in the rate-books of such parishes respectively, as entitled to vote as owners, assembled at a meeting to be duly convened and held for that purpose, after public notice of the time and place of holding such meeting, and the purpose for which the same is intended to be held, shall have been given, in like manner as notices of vestry meetings are published and given, to direct that such sum or sums of money, not exceeding half the average yearly rate for the three preceding years, as the said owners and ratepayers so assembled at such meeting may think proper, shall be raised or borrowed as a fund, or in aid of any fund or contribution for defraying the expense of the emigration of poor persons having settlements in such parish, and willing to emigrate, to be paid out of or charged upon the rates raised or to be raised for the relief of the poor in such parish, and to be applied under and according to such rules, orders, and regulations as the poor law commissioners shall in that behalf direct: provided always, that no such direction for raising money for such purpose as aforesaid shall have any force or effect, unless and until confirmed by the said commissioners; and that the time to be limited for the repayment of any sum so charged on such rates as aforesaid shall in no case exceed the period of five years from the time of borrowing the same: provided also, that all sums of money so raised as last hereinbefore mentioned, and advanced by way of loan, for the purposes of emigration, or such proportion thereof as the said commissioners shall by any rule, order, or regulation from time to time direct, shall be recoverable against any such person being above the age of twenty-one years, who or whose family, or any part thereof, having consented to emigrate, shall refuse to emigrate after such expenses shall have been so incurred, or having emigrated shall return, in such and the like manner as is hereinbefore provided with respect to relief, or the cost price of relief, given or considered to be given by way of loan to any person, his wife or family. See stat. 7 & 8 Vict. c. 101, s. 29.

Also, by stat. 11 & 12 Vict. c. 110, s. 5, the guardians of any union or parish may, with the order of the said commissioners and in conformity with such regulations as they shall make, procure or assist in procuring the emigration of any poor person rendered irremovable by stat. 9 & 10 Vict. c. 66, and chargeable, or who would, if relieved, be chargeable upon the common fund of such union, or in the case of any parish not comprised in a union who may, though not settled therein,

be irremovable as aforesaid therefrom ; and such guardians shall, in the case of a union, charge the costs and expenses incurred in such emigration upon the common fund, and, in the case of a parish not in a union, upon the moneys in their hands for the relief of the poor.

And by stat. 12 & 13 Vict. c. 103, s. 20, the guardians of any union, or of any separate parish for which a board of guardians is or shall be established, may expend, with the order and subject to the rules and regulations of the poor law board, but not otherwise, any sum of money not exceeding ten pounds for each person, in and about the emigration of poor persons having settlements in such parish, or in any parish in such union respectively, without the necessity of the rate-payers and owners of property therein meeting and giving their consent (as required by the said Act of the fifth year of King William the Fourth) to such expenditure, and such guardians shall charge the same to the parish of the settlement, in every case where such poor person resided therein, or was removable thereto at the time of the emigration :—provided always, that the guardian or (if more than one) a majority of the guardians of such last-mentioned parish shall express his or their concurrence in writing in the resolution of the board of guardians for such expenditure, and that such written concurrence shall be transmitted by the clerk of the union in communicating that resolution to the poor law board :—provided also, that the aggregate amount of the moneys expended in the course of any one year in and about the emigration of such poor persons, shall not exceed one-half of the average yearly poor-rate raised in the said parish for the three preceding years.

The following conditions are inserted by the poor law board in all orders sanctioning the emigration of poor persons :—

1. The party emigrating shall go to some British colony not lying within the Tropics.

2. The guardians may expend a sum not exceeding 3*d.* a mile in conveying each emigrant above seven years of age to the port of embarkation ; and a sum not exceeding 1½*d.* a mile in conveying each child under seven years of age.

3. The guardians may provide for each emigrant, the place of whose destination shall be not eastward of the Cape of Good Hope, clothing to a value not exceeding 1*l.* ; and may also expend a sum not exceeding 10*s.* for each emigrant in the purchase of bedding and utensils for the voyage.

4. The guardians may provide for each emigrant proceeding to the Cape of Good Hope, clothing to a value not exceeding 2*l.* ; and for each emigrant to places eastward of the Cape of Good Hope, clothing to a value not exceeding 2*l.* 10*s.* ; and in either case may expend a sum not exceeding 1*l.* for each

person above fourteen, and a sum not exceeding 10s. for every child above one and under fourteen years of age ; and in the case of every single man above eighteen years of age, conveyed by or under the authority of Her Majesty's government, a sum not exceeding 2l., in the purchase of bedding and utensils for the voyage.

5. If the emigrant be not conveyed by or under the authority of Her Majesty's government to the place of destination, or provision be not otherwise made in a manner satisfactory to the poor law board for the maintenance of such emigrant on arrival at such place, a contract, to be approved of by the said poor law board, shall be entered into for securing a sum of money to be supplied to the emigrant on such arrival, according to the following scale :—

To each person exceeding fourteen years of age..£1 0 0

To each person not exceeding fourteen years of age 0 10 0

6. If the emigrant be not conveyed by or under the authority of Her Majesty's government to the place of destination, and the cost, or any part thereof, of conveying the emigrant from the port of embarkation to such place, shall be defrayed from the fund above directed to be provided, a contract shall be entered into for conveying the emigrant to such place, to be approved of by the said poor law board, before the sailing of the vessel in which such emigrant is to be conveyed.

*Their duty in binding pauper apprentices.]* By stat. 7 & 8 Vict. c. 101, s. 12, after the first day of October, 1844, no poor child shall be bound apprentice by the overseers of any parish included in any such union or subject to a board of guardians under the provisions of stat. 4 & 5 W. 4, c. 76, but it shall be lawful for the guardians of such union or parish respectively to bind any such poor child to be an apprentice, and in such case the indentures of apprenticeship shall be executed by the said guardians, and shall not need to be allowed, assented to, or executed by any justice or justices of the peace, and the guardians shall have all the powers for binding or assigning any such apprentice which are now possessed by overseers, and shall cause all apprentices so bound or assigned by them to be registered by their clerk according to the form prescribed by the statute of the forty-second year of the reign of King George the Third, relating to the registration of parish apprentices, so far as the same may be applicable to such binding or assignment : provided always, that nothing herein contained shall directly or indirectly interfere with the provisions of any Act of parliament relating to apprentices to be bound to the sea service.

And by the same section, the poor law commissioners may,

by order under their hands and seal, prescribe the duties of the masters to whom poor children may be apprenticed, and the terms and conditions to be inserted in the indentures by which such children may be so bound as apprentices; and every master of such apprentice, who wilfully refuses or neglects to perform any of such terms or conditions so inserted in any such indenture, shall be liable, upon conviction thereof before any two justices, to forfeit any sum not exceeding twenty pounds. *Id.* s. 12.

And the commissioners since, by their consolidated orders of the 24th July, 1847 (which are directed to unions only, not to parishes), have in this behalf ordered and directed as follows:—

*Art. 52.* No child under the age of nine years, and no child (other than a deaf and dumb child) who cannot read and write his own name, shall be bound apprentice by the guardians.

*Art. 53.* No child shall be so bound to a person who is not a housekeeper, or assessed to the poor-rate in his own name;

Or who is a journeyman, or person not carrying on trade or business on his own account;

Or who is under the age of twenty-one;

Or who is a married woman.

*Art. 54.* No premium, other than clothing for the apprentice, shall be given upon the binding of any person above the age of sixteen years, unless such person be maimed, deformed, or suffering from some permanent bodily infirmity, such as may render him unfit for certain trades or sorts of work.

*Art. 55.* Where any premium is given it shall in part consist of clothes supplied to the apprentice at the commencement of the binding, and in part in money, one moiety whereof shall be paid to the master at the binding, and the residue at the termination of the first year of the binding.

*Art. 56.* No apprentice shall be bound by the guardians for more than eight years.

*Art. 57.* No person above fourteen years of age shall be so bound without his consent.

And no child under the age of sixteen years shall be so bound without the consent of the father of such child, or if the father be dead, or be disqualified to give such consent, as hereinafter provided, or if such child be a bastard, without the consent of the mother, if living, of such child.

Provided, that where such parent is transported beyond the seas, or is in the custody of the law, having been convicted of some felony, or for the space of six calendar months before the time of executing the indenture has deserted such child, or for such space of time has been in the service of Her Majesty, or of the East India Company, in any place out of the United Kingdom, such parent, if the father, shall be

deemed to be disqualified as hereinbefore stated, and if it be the mother, no such consent shall be required.

*Art. 58.* No child shall be bound to a master whose place of business, whereat the child is to work and live, is distant more than thirty miles from the place in which the child is residing at the time of the proposed binding, or at the time of his being sent on trial to such master;

Unless in any particular case the commissioners shall, on application to them, otherwise permit.

*Art. 59.* If the child whom it is proposed to bind apprentice, be in the workhouse and under the age of fourteen years, the guardians shall require a certificate in writing from the medical officer of the workhouse as to the fitness in regard to bodily health and strength of such child to be bound apprentice to the proposed trade, and shall also ascertain from the master of the workhouse the capacity of the child for such binding in other respects.

*Art. 60.* If the child be not in the workhouse, but in the union, by the guardians of which it is proposed that he shall be bound, the relieving officer of the district in which the child is residing shall examine into the circumstances of the case, the condition of the child and of his parents, if any, and the residence of the proposed master, the nature of his trade, the number of other apprentices, if any, then bound to him, and generally as to the fitness of the particular binding, and shall report the result of his inquiry to the guardians.

*Art. 61.* If in any case within Article 60 the guardians think proper to proceed with the binding, they shall, when the child is under the age of fourteen years, direct the relieving officer to take the child to the medical officer of the district, to be examined as to his fitness in respect of bodily health and strength for the proposed trade or business; and such medical officer shall certify in writing according to his judgment in the matter, which certificate shall be produced by the said relieving officer to the next meeting of the guardians.

*Art. 62.* If the child be not residing within the union, the guardians who propose to bind him shall not proceed to do so, unless they receive such a report as is required in Article 60 from the relieving officer of the district in which such child is residing, and a certificate from some medical man practising in the neighbourhood of the child's residence to the effect required in Article 61.

*Art. 63.* When it is proposed to give a premium other than clothing upon the binding of any person above the age of sixteen years, the guardians shall require a certificate in writing from some medical practitioner, certifying that the person is maimed, deformed, or disabled to the extent specified

in such Article, and shall cause a copy of such certificate to be entered on their minutes before they proceed to execute the indenture.

*Art. 64.* When such certificate as is required by Articles 59, 61, 62, and 63, is received, or in case from the age of the child no such certificate is required, the guardians shall direct that the child and the proposed master, or some person on his behalf, and in case the child be under the age of sixteen, that the parent or person in whose custody such child shall be then living, attend some meeting of the board to be then appointed.

*Art. 65.* At such meeting, if such parties appear, the guardians shall examine into the circumstances of the case; and if, after making all due inquiries, and hearing the objections (if any be made) on the part of the relatives or friends of such child, they deem it proper that the binding be effected, they may forthwith cause the indenture to be prepared, and, if the master be present, to be executed, but if he be not present, they shall cause the same to be transmitted to him for execution; and when executed by him and returned to the guardians, the same shall be executed by the latter, and shall be signed by the child, as provided by Article 67.

*Art. 66.* If the proposed master reside out of the union, but in some other union or parish under a board of guardians, whether formed under the provisions of the first-recited Act, or of the Act of the twenty-second year of the reign of King George the Third, intituled "An Act for the better Relief and Employment of the Poor," or of any local Act, the guardians shall, before proceeding to effect the binding, communicate in writing the proposal to the guardians of such other union or parish, and request to be informed whether such binding is open to any objection, and if no objection be reported by such guardians within the space of one calendar month, or, if the objection does not appear to the guardians proposing to bind the child to be sufficient to prevent the binding, the same may be proceeded with; and when the indenture shall have been executed, the clerk to the guardians who executed the same shall send notice thereof in writing to the guardians of the union or parish wherein the said apprentice is to reside.

*Art. 67.* The indenture shall be executed in duplicate, by the master and the guardians, and shall not be valid unless signed by the proposed apprentice with his name, or, if deaf and dumb, with his mark, in the presence of the said guardians; and the consent of the parent, where requisite, shall be testified by such parent signing with his name or mark, to be properly attested, at the foot of the said indenture; and

where such consent is dispensed with under Article 57, the cause of such dispensation shall be stated at the foot of the indenture by the clerk.

*Art. 68.* The name of the place or places at which the apprentice is to work and live shall be inserted in the indenture.

*Art. 69.* One part of such indenture, when executed, shall be kept by the guardians; the other shall be delivered to the master.

*Their certificate of chargeability.]* It shall be lawful for any board of guardians or district board, at any meeting thereof, to make a certificate in the form or to the effect contained in the schedule of this Act (*vide infra*), and that every such certificate, and every copy of a minute of any order, complaint, claim, application, or authority of any such board of guardians or district board, purporting respectively to be signed by the presiding chairman of such guardians or district board, and to be sealed with their seal, and to be countersigned by their clerk, shall, unless the contrary be shown, be taken to be sufficient proof of the truth of all the statements contained in such certificate, and of the directions respecting such order, complaint, claim, or application having been given as alleged in the copy of such minute, and shall be received in evidence accordingly by and before all courts of justice and all justices, without any proof of the signatures or of the official characters of the persons signing the same, or of such seal, or of such meeting; and that for the purpose of making any order of removal or other order, no further or other evidence of chargeability than such certificate shall be required, provided that every such order bear date within twenty-one days next after the day of the date of such certificate. 7 & 8 Vict. c. 101, s. 69.

And by stat. 11 & 12 Vict. c. 110, s. 11, such a certificate of chargeability shall be evidence thereof in all courts, and before any justice or justices, and for all purposes, for twenty-one days from the date thereof.

*Form of the Certificate.*

*The board of guardians of the poor of the — union [or parish of — ] do hereby certify, that on the — day of —, A. B., and his wife C. B., and his child E. B., became chargeable to the parish of —, in the said union [or to the said union].*

*In testimony whereof the common seal of the said guar-*



*dians is hereunto affixed at a meeting of their board, this — day of —, 18—.*

[L.S.] (Signed) *W. J., presiding chairman of the said board.*

(Countersigned) *C.D., clerk [or acting as clerk] to the board of guardians of —.*

*Their duty in respect to payment of county rate.]* When and as often as the justices of the peace within the respective limits of their commission in England have made a county rate, a printed list of the parishes and places assessed to such rate, and the amount of the rateable value upon which each such parish and place shall have been respectively assessed, shall be sent to the overseers of the poor, constables, or other persons charged with the collection or levy of the county rate in every parish and place within the county, and such justices, assembled at their general or quarter sessions, or at any adjournment thereof, shall order precepts in the form shown in the schedule annexed to this Act, or as near thereto as may be, to be issued to the guardians of every union of parishes, of which union any parish is situate within such limits, stating the sum or sums assessed and charged for each such rate on each parish in the union, the whole of which parish is situate within such limits, and to the guardians of every single parish situate within such limits, stating the sum or sums assessed and charged on such parish for each such rate, and requiring the guardians of such union or parish respectively, within such time as may be limited in such precepts, to cause the aggregate of the said several sums so stated to be paid by them, out of the moneys held by them on behalf of each such parish, to the treasurer of the county or place for which such justices act, and may cause such precepts to be sent, by post or otherwise, to such guardians; and such precepts shall have force in every such union, so far as concerns such parishes as are within the limits of the commission of the said justices, notwithstanding that the place of meeting of such guardians may not be situated within such limits, and without being endorsed with the signature of any justice of the peace having ordinary jurisdiction in the place of meeting of the guardians; and such guardians shall raise the moneys required by such precepts to be paid in like manner as the money required by such guardians for the relief of the poor, and shall pay such moneys at the time limited and in the manner prescribed by such precepts; and if the treasurer of such guardians, or any person on his or their behalf, tender to the treasurer of the county or place for which such justices act the aggregate of the said several sums, or if he so tender the whole sum assessed on any such parish or parishes in

respect of any such rate or rates, together with a copy of such precept, in which are specified the parish or parishes and the rate or rates in respect of which the same is so tendered, the treasurer of the county shall receive the sum so tendered, notwithstanding that the sums required to be paid on behalf of other of such parishes or of other such rates be not then tendered, and shall give a receipt for the sum or sums received by him accordingly, but he shall not receive any sum on behalf of any such parish less than the whole of the sum assessed and charged thereon in respect of one such rate; and the receipt of the treasurer of such county or place shall be a good discharge for the payment of the sums specified in any such precept or of any of them. 15 & 16 Vict. c. 81, s. 26.

*Their duty as to providing for vaccination.]* The guardians of every union must contract with the medical officers of their several unions or parishes respectively, or with any legally qualified medical practitioner or practitioners, for the vaccination of all persons resident in such unions or parishes respectively; and the conditions of every such contract shall be that the amount of the remuneration to be received under the same, shall depend on the number of persons who, not having been previously successfully vaccinated, shall be successfully vaccinated by the medical officers or practitioners respectively so contracting. 3 & 4 Vict. c. 29, s. 1. The rates of payment under all contracts hereafter entered into are as follows: for every person successfully vaccinated at the residence of the medical officer or practitioner, or within two miles therefrom by the nearest public road, a sum not less than 1s. 6d., and for every person successfully vaccinated at any place more than two miles distant from such residence, any sum not less than 2s. 6d. 16 & 17 Vict. c. 100, s. 6.

The guardians, subject to the approval of the poor law board, must divide the parish or union, if need be, into convenient districts for the purpose of affording increased facilities for the vaccination of the poor, and appoint a convenient place in each district for the performance of such vaccination, and take the most effectual means for giving, from time to time, to all persons resident within the district due notice of the days and hours at which the medical officer or practitioner, contracted with for such purpose, will attend at such place to vaccinate all persons not already successfully vaccinated who may then appear there, and also of the days and hours at which such medical officer, &c., will attend at such place to inspect the progress of such vaccination in the person so vaccinated. *Id.* s. 1. In addition to the fee to the public vaccinator, the guardians must pay a fee of 3d. to the registrar of births and deaths for each case of vaccination which he

may register, in compliance with the provisions of the Act, s. 10. Vaccination at the cost of the poor rates is, by 4 & 5 Vict. c. 32, s. 2, declared not to be relief, and persons inoculating or otherwise producing small pox, are liable to one month's imprisonment. 3 & 4 Vict. c. 29, s. 8.

*Their duty in prosecuting for certain offences.]* By stat. 14 & 15 Vict. c. 11 (which renders the master or mistress of an apprentice or servant, who is legally liable to provide necessary food, clothing or lodging for him, liable to an indictment as for a misdemeanor, if they refuse or neglect to provide the same, or if they unlawfully and maliciously assault him, whereby his life shall be endangered, or whereby his health shall be, or is likely to be, permanently injured),—it is enacted by sect. 6, that where any complaint shall be made of an offence against this Act,—or of any bodily injury inflicted upon any poor person under the age of sixteen years, for which the party committing it is liable to be indicted, and the circumstances of which offence amount in point of law to a felony, or an attempt to commit a felony, or an assault with intent to commit a felony,—and two justices of the peace before whom the examination is taken, shall certify under their hands that they deem it necessary for the purposes of public justice that the prosecution should be conducted by the guardians of the union or of the parish, or, where there are no guardians, by the overseers of the parish in which the offence shall have been committed,—such guardians or overseers, as the case may be, shall, upon personal service of such certificate or a duplicate thereof upon the clerk of such guardians, or upon any one of such overseers, conduct the prosecution, and shall pay the costs reasonably and properly incurred by them therein (so far as the same shall not be allowed to them under any order of the court trying the indictment, or the court of Queen's Bench), out of the common fund of the union, or out of the funds in the hands of the guardians or overseers (as the case may be) of such parish.

And by sect. 7, in the case of a union or parish under a board of guardians, the clerk or some other officer of such union or parish, and in the case of a parish not under a board of guardians one of the overseers thereof, may, if such two justices before whom the examination is taken shall deem it necessary for the purposes of public justice, and shall certify as hereinbefore mentioned, be bound over to prosecute.

*Their duty in respect to the Removal of Irish and Scotch Paupers.*

By stat. 8 & 9 Vict. c. 117, s. 2, "if any person born in Scotland or Ireland, or in the Isle of Man, or Scilly, or Jersey,

or Guernsey, not settled in England, become chargeable to any parish in England by reason of relief given to himself or herself, or to his wife, or to any legitimate or bastard child,—such person, his wife, and any child so chargeable, shall be liable to be removed respectively to Scotland, Ireland, the Isle of Man, Scilly, Jersey, or Guernsey; and if the guardians of such parish, or of any union in which the same may be comprised, or, where there are no such guardians, if the overseers of such parish complain thereof to any one justice of the peace, such justice may, if such person do not attend voluntarily, summon him to come before any two justices of the peace, at any time and place to be named in the summons; and at such time and place, or on the attendance of such person, any two justices may hear and examine into the matter of such complaint [or, any guardian, relieving officer, or overseer of any parish or union in England, may take and convey before two justices of the peace, without summons or warrant, every poor person who shall become chargeable to any parish in England, and who he may have reason to believe is liable to be removed from England under the above Act (10 & 11 Vict. c. 33, s. 1)]; and if it be made to appear to their satisfaction, that such person is liable to be so removed as aforesaid, and if they see fit, they may make and issue a warrant under their hands and seals to remove such person forthwith at the expense of such union or parish.”

The wife must be removed with the husband, even although she have a maiden settlement in England. *R. v. Leeds*, 4 B. & A. 498. And the children, unemancipated, must be removed with the parent, although they have been born in England. *R. v. Mile End Old Town*, 4 Ad. & El. 196.

Regulations for carrying the Act into effect are made by the justices of each county, &c., and approved of by the secretary of state, stating whether the paupers are to be sent by sea or land, or partly by sea and partly by land, and at what port or place they are to be left. These regulations are indorsed on the warrant, before it is delivered to the overseer for execution; and the removal must be strictly in accordance with them.

Persons so taking paupers before justices, shall have all the rights, privileges, powers, and immunities of constables. 10 & 11 Vict. c. 33, s. 3.

“And every person to whom any warrant made in pursuance of this Act shall be delivered for the purpose of being carried into execution, shall detain and hold in safe custody every poor person mentioned therein, until such poor person have arrived at the place to which he is ordered to be removed, and shall for that purpose, in every county and place through which he may pass in the due execution of such warrant, have and exercise the powers with which a constable is by law invested, notwithstanding such person may not otherwise be

empowered to act as a constable for such county or place." 8 & 9 Vict. c. 117, s. 3.

" And in the case of any parish not in union, and not containing a population exceeding thirty thousand persons according to the last census published by the authority of parliament,—if the guardians or overseers, on whose complaint such warrant of removal was made, bring or send to the clerk of the peace of the county or to the town clerk of the borough in which such parish is situate such warrant of removal, accompanied with an affidavit, sworn before some justice of the peace of such county or borough (who shall be authorized to administer the same), of the amount of the expenses *bonâ fide* incurred and paid by such guardians or overseers on account of such removal under such warrant as aforesaid, and also a statement of the several items comprised in such amount, such clerk of the peace shall lay the same before the justices of the peace assembled at the quarter session or adjournment thereof holden for such county next after he has received the same; and such town clerk shall lay the same before the council of such borough at their quarterly meeting held next after he has received the same; and the said justices and council of such borough respectively, shall, if the regulations in force in regard to such removal have been duly complied with, order the amount of such expenses to be paid out of the county rate raised in such county, or out of the borough fund of such borough, as the case may be." *Id.* s. 5.

The statute gives an appeal.

*Their Clerk.*] By the consolidated order of the poor law commissioners, 24th July, 1847, Art. 153, the guardians of every union shall appoint a clerk. And, by stat. 7 & 8 Vict. c. 101, s. 68, it is enacted that notwithstanding anything contained in stat. 6 & 7 Vict. c. 73, as to attornies, it shall be lawful for any clerk or other officer to any board of guardians, constituted under the said first-recited Act or under any local Act, or to any district board, if duly empowered by such board, to make or resist any application, claim, or complaint, or to take and conduct any proceedings on behalf of such board, before any justice or justices of the peace, at petty or special sessions, or out of sessions, although such clerk or officer be not an attorney or solicitor, or have not obtained a stamped certificate in pursuance of the provisions of the said Act.

By the consolidated order of the commissioners, 24th July, 1847,—

*Art.* 202. The following shall be the duties of the clerk :—

No. 1. To attend all meetings of the board of guardians, and to keep punctually minutes of the proceedings at every meeting, to enter the said minutes in a book, and to submit the

same so entered to the presiding chairman at the succeeding meeting for his signature.

No. 2. To keep, check, and examine all accounts, books of accounts, minutes, books, and other documents, as required of him by the regulations of the commissioners, or relating to the business of the guardians, and from time to time to produce all such books and documents, together with the necessary vouchers and the bonds of any officers, with any certificates relating thereto, which may be in his custody, to the auditor of the union, at the place of audit and at the time and in such manner as may be required by the regulations of the commissioners.

No. 3. To peruse and conduct the correspondence of the guardians according to their directions, and to preserve the same, as well as all orders of the commissioners, and letters received, together with copies of all letters sent, and all letters, books, and papers, and documents belonging to the union, or intrusted to him by the guardians, and to make all necessary copies thereof.

No. 4. To prepare all written contracts and agreements to be entered into by any parties with the guardians, and to see that the same are duly executed, and to prepare all bonds or other securities to be given by any of the officers of the union, and to see that the same are duly executed by such officers and their sureties.

No. 5. To receive all requisitions of guardians for extraordinary meetings, and to summon such meetings accordingly; and to make, sign, and send all notices required to be given to the guardians by this or any other order of the commissioners.

No. 6. To countersign all orders legally made by the guardians on overseers, for the payment of money, and all orders legally drawn by the guardians upon the treasurer.

No. 7. To ascertain, before every ordinary meeting of the board, the balance due to or from the union, in account with the treasurer, and to enter the same in the minute book.

No. 8. At the first meeting of the guardians in each quarter, to lay before the guardians, or some committee appointed by them, the non-settled poor account, and the non-resident poor account, posted in his ledger to the end of the preceding quarter, and to take the directions of the guardians respecting the remittance of cheques or post-office orders to the guardians of any other union or parish, or the transmission of accounts due from other unions or parishes, and requests for payment.

No. 9. Within fourteen days from the close of each quarter, to transmit by post all accounts of relief administered in the course of the preceding quarter to non-settled poor, to the guardians of the unions and parishes on account of which such relief was given; and to state in every account so transmitted

the names and classes of the several paupers to whom the relief in question has been administered.

No. 10. To communicate to the several officers and persons engaged in the administration of relief within the union, all orders and directions of the commissioners, or of the guardians; and so far as may be, to give the instructions requisite for the prompt and correct execution of all such orders and directions, and to report to the guardians any neglect or failure therein which may come to his knowledge.

No. 11. To conduct all applications by or on behalf of the guardians to any justice or justices at their special, petty, or general sessions; and, if he be an attorney or solicitor, to perform and execute all legal business connected with the union, or in which the guardians shall be engaged, except prosecutions at the assizes, actions at law, suits in equity, or parliamentary business, without charge for anything beyond disbursements.

No. 12. To prepare and transmit all reports, answers, or returns, as to any question or matter connected with or relating to the administration of the laws for the relief of the poor in the union, or to any other business of the union, which are required by the regulations of the commissioners, or which the commissioners, or any assistant-commissioner, may lawfully require from him.

No. 13. To conduct duly and impartially, and in strict conformity with the regulations in force at the time, the annual or any other election of guardians.

No. 14. To observe and execute all lawful orders and directions of the guardians applicable to his office.

## 2. GUARDIANS OF THE POOR FOR SINGLE PARISHES.

If the commissioners shall, by any order under their hands and seal, direct that the administration of the laws for the relief of the poor of any single parish should be governed and administered by a board of guardians, then such board shall be elected and constituted, and authorized and entitled to act, for such single parish, in like manner in all respects as is hereinbefore enacted and provided in respect to a board of guardians for united parishes; and every justice of the peace resident therein [or in any extra-parochial place, the boundary line of which, or the greater part of the boundary line of which is included within or coincident with the boundary line of such parish, 7 & 8 Vict. c. 101, s. 24], and acting for the county, riding, or division in which the same is situated, shall be and may act as an *ex officio* member of such board. 4 & 5 W. 4, c. 76, s. 39. See *R. v. Poor Law Comm.* 6 Ad. & Bl. 1.

And in every case in which a parish in which guardians are

to be elected under the provisions of the said first-recited Act contains more than twenty thousand persons, according to the enumeration of the population then last published by authority of parliament, it shall be lawful for the said commissioners, by order under their hands and seal, for the purpose of conducting the election of guardians, to divide such parish into such and so many wards as they may deem expedient, so that no such ward shall contain a number of rated houses less than four hundred, and to determine the number of guardians to be elected for every such ward, having due regard to the value of the rateable property therein : and each such ward shall, for the purpose of every election of guardians, so far as the said commissioners may direct, be considered as a separate parish. 7 & 8 Vict. c. 101, s. 19.

The guardians of wards shall have the same qualification as guardians of parishes ; but no person shall be elected for more wards than one, or if he be nominated for more, he shall elect for which he will stand. *Id.* s. 20. Votes must be in respect of property in the ward ; and a party having property in more than one ward, may, by notice, elect in which ward he will vote, and in default of such notice he shall vote only in that ward in which he resides. *Id.* s. 21.

The duties and functions of a board of guardians established for a single parish, are precisely similar to those of boards of guardians for unions of parishes, and therefore need not be repeated at this place.

### 3. GUARDIANS UNDER LOCAL ACTS, &c.

By stat. 7 & 8 Vict. c. 101, s. 64, the guardians of every parish or union acting under any local Act for the relief of the poor, shall hold their meetings once in every fortnight, or oftener, and in all matters concerning the relief of the poor shall act as a board at a meeting, and not individually ; and whenever under any such local Act there is no person particularly designated or authorized to act as chairman, such guardian shall elect and appoint annually, and from time to time, as vacancies may occur, a chairman and vice-chairman of such board, and shall at any meeting at which no chairman or vice-chairman is present elect a temporary chairman to preside at that meeting : provided always, that when the relief of the poor has been hitherto administered in any parish by guardians appointed under a local Act, and not by overseers of the poor, if such parish, according to the last enumeration of the population published by authority of parliament, contain more than twenty thousand persons, it shall not be lawful for the said commissioners, after the passing of this Act, without the consent in writing of two-thirds at least of such guardians, to declare such parish to be united with any other parish for



the administration of the laws for the relief of the poor, any thing in the said first-recited Act to the contrary notwithstanding.

By stat. 11 & 12 Vict. c. 91, s. 12, after reciting that in certain parishes and unions wherein the relief of the poor is administered by guardians or other competent authorities under the provisions of particular statutes or local Acts applicable thereto, doubts have been entertained whether any poor person can be relieved by such guardians or other authorities out of the workhouses belonging to such parishes and unions respectively, and it is expedient to remove such doubts, and to give authority for such relief out of the workhouses:—it is enacted, that in all cases where the relief of the poor is administered in any parish or union under the provisions of any local Act, it shall be lawful for the guardians or other competent authority, administering the relief to the poor in any such parish or union if they think fit, to administer such relief in all respects in like manner and with the like powers and authorities as any board of guardians of a union formed under the provisions of stat. 4 & 5 W. 4, c. 76, is now or shall hereafter be authorized to do: provided always, that the cost of all such relief so given or to be given shall be charged among the parishes in the same union in like manner and in like proportion as the relief heretofore or hereafter to be given in the workhouse of such parish or union is now or shall hereafter be chargeable.

The provisions of the 22 Geo. 3, c. 83 (Gilbert's Act), being now for the most part obsolete, and as regards the administration of relief, as well as otherwise, impracticable, are omitted from this work. At the present time (1854), there are only a very few parishes which remain subject to the provisions of Gilbert's Act.

## HIGHWAYS.

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1. *Highway Rate*, p. 209.
2. *Surveyors of the Highways*, p. 212.

### 1. HIGHWAY RATE.

<i>By whom and how made</i> , 209.	<i>What persons excused</i> , 210.
<i>Form and amount</i> , 209.	<i>Rates, how recovered</i> , 210.
<i>Errors in it, how rectified</i> , 210.	<i>Composition for rates</i> , 210.
	<i>Appeal against a rate</i> , 210.

*By whom and how made.*] In order to raise money for carrying the several purposes of this Act into execution, a rate shall be made, assessed, and levied by the surveyor upon all property now liable to be rated and assessed to the relief of the poor; and upon such woods, mines, and quarries of stone, or other hereditaments, as have heretofore been usually rated to the highways; such rate to be signed by the said surveyor and allowed by two justices of the peace, and published in the same way as poor rates are now allowed and published. 5 & 6 W. 4, c. 50, s. 27.

The words “usually rated” here mean merely such woods, &c., as have usually been actually rated in the particular parish; and therefore, upon an appeal against a highway rate, it was holden that the sessions were right in inquiring whether certain woods were usually rated, in point of fact, at the time of the passing of the statute, and not whether such woods were rateable, or whether they were usually rated in other parishes. *R. v. Rose*, 13 Law J. 155, m.; 6 Q. B. 153.

And for this purpose the surveyor may, at all reasonable times, inspect, or by writing signed by him grant authority to any person to inspect, the poor rates of the parish of which he is surveyor, or the books of assessments thereto, and make copies thereof, or extracts therefrom; and if any person in whose custody or power the said rates or books shall be, shall when thereunto required, refuse or neglect to produce the same to the surveyor, or person so by him authorized as aforesaid, or to allow such copy or extract to be made, or taken, at all reasonable hours in the day-time, he shall for every such offence forfeit and pay any sum not exceeding five pounds. 5 & 6 W. 4, c. 50, s. 28.

*Form and amount.*] Every rate shall contain the names of the occupiers, the description of the property they occupy,

and the full annual value thereof, and shall also specify the sum in the pound at which it is made; and no such rate shall exceed at any one time the sum of tenpence in the pound, or the sum of two shillings and sixpence in the pound in the whole in any one year, unless with the consent of four-fifths of the rate-payers assembled at a meeting specially called for that purpose. *Id.* s. 29.

*Errors in it, how rectified.*] If there be any omission or error in the rate, in the name of any person, tenement, &c., liable to be rated, the surveyor, with the approbation of the justices at a special sessions for the highways, may cause to be added or corrected in the said rate the name of the person omitted or erroneously stated, and a description of the property in respect of which he ought to be rated; which, being signed by such justices, shall be as effectual as if the same had originally been part of the rate. *Id.* s. 31.

*What persons excused.*] The justices at a special sessions for the highways, on application made to them by any person rated to any rate under the authority of this Act to be discharged therefrom, may, on proof of his inability through poverty to pay such rate (the surveyor having been first summoned to appear on the part of the parish), order that such person shall be excused from the payment of such rate. *Id.* s. 32.

Property, which previous to the passing of this Act, has been legally exempt from the performance of statute duty, or from the payment of composition in lieu thereof, or of highway rate, shall be exempt from the payment of the rate hereby imposed. *Id.* s. 33.

*Rates, how recovered.*] And for levying and recovering the said rate, the surveyor shall have the same powers, remedies, and privileges, as the overseers of the poor in the parish have by law for the recovery of any rate made for the relief of the poor. *Id.* s. 34. See *Morrell v. Martin*, 11 Law J. 22, *m.* *Charrinton v. Johnson*, 14 Law J. 299. See *post*, tit. "*Overseers of the Poor.*"

*Composition for rates.*] In parishes in which the overseers of the poor have power, by local Acts of parliament, to compound with or require composition for poor rates from the landlords of certain tenements, &c., and, in case of refusal to compound, to rate such landlords as the occupiers, the surveyor shall have the same powers, remedies, and privileges as to the rates authorized to be made by this Act. *Id.* s. 30.

*Appeal against a rate.*] If any person shall think himself aggrieved by any rate made under or in pursuance of this Act,

or by any order, conviction, judgment, or determination made, or by any matter or thing done, by any justice or other person, in pursuance of this Act, and for which no particular method of relief hath been already appointed, such person may appeal to the justices at the next general or quarter sessions of the peace to be held for the county, division, riding, or place wherein the cause of such complaint shall arise,—such appellant first giving to the surveyor, or to such justice or other person by whose act such person shall find himself aggrieved, notice in writing of his intention to bring such appeal, together with a statement in writing of the grounds of such appeal, within fourteen days after such rate shall be made, or cause of complaint shall arise,—and within four days after such notice, entering into a recognizance before some justice, with two sufficient sureties, conditioned to try such appeal at and abide the order of, and pay such costs as shall be awarded by the justices at such general or quarter sessions; and such justices upon hearing and finally determining the matter of such appeal, may, according to their discretion, award such costs to the party appealing or appealed against, as they shall think proper: but in case there shall not be time to give such notice and enter into such recognizance before the next sessions, then such appeal may be made to the next following sessions, and shall be then heard and determined: provided, also, that it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid, nor, on the hearing of such appeal, to go into evidence of any other grounds of appeal than those set forth in such statement. 5 & 6 W. 4, c. 50, s. 105.

And in all cases of appeal against the rate made in pursuance of this Act, the several provisions and enactments contained in stat. 41 Geo. 3, c. 23, relative to poor rates, shall be applicable thereto, as if the same had been repealed and re-enacted in this Act. *Id.* s. 106.

But no rate, nor any proceeding to be had touching the conviction of any offender against this Act, or any order made, or any other matter or thing done or transacted in or relative to the execution of this Act, shall be vacated or quashed for want of form, or be removable (except as herein mentioned) by *certiorari*, or any other writ or process whatsoever, into any of His Majesty's courts of record at Westminster. *Id.* s. 107.

In any case of appeal, however, the court of quarter sessions may, if they think fit, state the facts specially for the determination of the court of King's Bench thereon, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or otherwise, into the said court of King's Bench. *Id.* s. 108.

**2. SURVEYORS OF THE HIGHWAYS.**

1. *Appointment of Officers for the Repair, &c., of Highways*, 212.
2. *Their Duties*, 217.
3. *Penalties for Neglect of Duty*, 245.

1. *Appointment of Officers for the Repair, &c. of Highways.*

<i>Surveyors for single parishes</i> , 212. <i>Officers in large parishes</i> , 213.		<i>Officers appointed in dis-</i> <i>tricts</i> , 214.
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*Surveyors for single parishes, &c.*] The inhabitants of every parish maintaining its own highways, at their first meeting in vestry for the nomination of overseers of the poor in every year, shall proceed to the election of one or more persons to serve the office of surveyor in the said parish for the year then next ensuing; and in such case notice of such election shall be given by the chairman to the person elected and to the outgoing surveyor: provided always, that in any parish where there is no meeting in the year for the nomination of overseers of the poor, the inhabitants contributing to the highway rate shall meet at their usual place of public meeting upon the 25th of March or within fourteen days afterwards, in every year, to elect one or more persons to serve the office of surveyor for the said parish. 5 & 6 Will. 4, c. 50, s. 6.

And if any person so chosen and elected, shall refuse or neglect to take upon himself the office of surveyor, or to provide a sufficient deputy, to be approved of, he shall forfeit, on conviction before any two justices of the peace, any sum not exceeding twenty pounds, unless he can show to the said justices good and sufficient cause why he should not be called upon to serve the said office. *Id.* s. 8.

And every deputy provided and approved of as above mentioned, shall have the same powers and authorities, and be subject to the discharge of the same duty, and be liable to the same penalties, as any surveyor appointed under the authority of this Act. *Id.* s. 8.

But if it shall appear on oath to the justices at a special sessions for the highways, that the inhabitants of any parish have neglected or refuse to nominate and elect a surveyor, or that the outgoing surveyor (except he had been directed by the inhabitants so to do), has delivered no statement of the

name and residence of his successor, or that the surveyor is dead, or has ceased to possess the qualifications, or is or has become disqualified in any manner herein mentioned, or that he has neglected to act, or refused to carry into operation the duties imposed upon him by this Act: it shall and may be lawful for such justices, and they are hereby authorized and required, by writing under their hands, at their next succeeding special sessions for the highways, to dismiss such surveyor so neglecting to act or refusing to carry into operation the duties imposed upon him by this Act, and to appoint any person whom they may think fit to be a surveyor for such parish till the annual meeting then next ensuing for the nomination of overseers or for the election of surveyors as aforesaid, and with or without such salary, as to the said justices shall seem fit and proper. *Id.* s. 11.

And when a parish is situate in more than one county, division, or liberty, the surveyor so to be appointed as last aforesaid shall be appointed by the justices at a special sessions for the highways assembled in that county, division, or liberty in which the church of the said parish shall be situate. *Id.* s. 12.

As to the qualification of surveyor:—Any person living within the parish or any adjoining parish, and having an estate in houses, lands, or hereditaments lying within such parish, in his own right or in right of his wife, of the value of 10*l.* by the year, or a personal estate of the value of 100*l.* (such person not living within the parish being willing to serve the office), or being an occupier or tenant of houses, lands, tenements, or hereditaments (whether resident within the parish or any adjoining parish) of the yearly value of 20*l.*, shall be eligible to be elected a surveyor for the purposes of this Act: provided nevertheless that no person that is now exempted by law from serving the office of overseer of the poor, shall be compellable to serve the office of surveyor. *Id.* s. 7.

*Officers in large parishes.]* Whereas it is expedient in large and populous parishes, that the repairs of the highways should be under the direction and control of a certain number of inhabitants, to be chosen and appointed as a board for that purpose, with necessary powers; it is enacted, that in any parish [see *R. v. Bush*, 9 Ad. & El. 820; 8 Law J. 39, *m.*] where the population by the then last census, taken from the returns made to parliament, exceeds the number of five thousand, if it shall be determined by a majority of two-thirds of the votes of the vestrymen present at such meeting as aforesaid, to form a board for the superintendence of the highways of the said parish, and for the purpose of carrying the provisions of this Act into effect, the said vestry may nominate and elect any number of persons, not exceeding

twenty nor less than five, being respectively householders and residing in and assessed to the rate for the relief of the poor of the said parish, and also liable to be rated to the repair of the highways in the said parish under and by virtue of this Act, to serve the office of surveyors of the highways for the year ensuing; and such persons so to be nominated and elected, as such surveyors, or any three of them, shall and are hereby authorized to act as a board, and to be called "the board for repair of the highways in the parish of ——" (as the case may be), and to carry into effect the powers, authorities, and directions in this Act contained. 5 & 6 W. 4, c. 50, s. 18.

And upon such board being so nominated and elected, all the powers and authorities given and created by this Act, and granted to or vested in the vestry, and in any person as surveyor, shall, for the purposes of the parish so nominating and electing such board, be vested in the persons so elected, or any three of them acting as such board as aforesaid. *Id.* s. 18.

And such board may rent, or with the consent of the vestry of any parish may purchase, fit premises for the keeping of the implements and materials necessary for the reparation of the highways, and may direct how and in what manner the highways in the said parish shall be curbed or paved with stone or otherwise. *Id.* s. 19.

Such board may appoint a collector or any number of collectors of the rates, and also employ a person of skill and experience to act as an assistant surveyor to the said board, and also a clerk to attend the said board, and to keep the accounts and minutes of the proceedings thereof; such assistant surveyor and clerk to be paid such reasonable salaries out of the said rates as the said board shall determine. *Id.* s. 18.

And such persons or any three of them, at a meeting to be convened for that purpose, may nominate and appoint a fit and proper person to be treasurer. *Id.* s. 18.

Upon the expiration of the year for which such board shall be elected, and before or on the day for the nomination and election of persons as surveyors under the authority of this Act, the said board shall present to the vestry of the parish for which they shall have acted, copies of all their accounts and also of the minutes of their proceedings during the preceding year. *Id.* s. 18.

*Officers appointed in districts.] Whereas it is expedient that in many cases parishes should be formed into districts, for the purpose of having one sufficient person to be the district surveyor, who should have the superintendence and management of the funds to be raised and levied under the provisions of this Act in each parish forming part of such*

district; it is enacted, that the inhabitants of any parish, in vestry assembled, if they shall think fit, may direct one of the churchwardens of such parish, or the chairman of the said vestry, to make application to the justices assembled at the quarter sessions for the county, or (where the parishes to be united shall be situated in the same division) at some special sessions for the division in which such parish shall be situate, for the purpose of being united with one or more parishes to form a district for the purposes aforesaid, and at the same time to nominate one fit and proper person, to be returned to the said justices, to be appointed as such district surveyor, together with the amount of the yearly salary which the said inhabitants in such vestry assembled shall agree to pay to such district surveyor. 5 & 6 Will. 4, c. 50, s. 13.

And on such application being made by two or more parishes to the said justices, they are hereby authorized at the said quarter sessions, or at some special sessions as aforesaid, to take the same into their consideration, and to unite such and so many of the parishes so applying, as they shall think fit, into a district for the purposes of this Act; and the said justices shall select and appoint, out of the persons so nominated as aforesaid by the several parishes so united into one district, one fit and competent person to be the surveyor for such district, which appointment shall be in writing. *Id.* s. 14.

And the names of the parishes so united, and the name of the person so appointed as district surveyor, shall be reduced into writing, signed by the chairman of the said quarter sessions, or by the majority of the magistrates present at such special sessions, and shall be transmitted by him or them to the clerk of the peace, who shall lay the same before the justices assembled at the quarter sessions for the said county, who shall cause the same to be enrolled with the records of the court; and a copy thereof shall be sent by such clerk of the peace to each of the churchwardens or the surveyor of each of the said parishes so united. *Id.* s. 15.

And such parishes, so united, shall continue to form a district for the purposes of this Act, for three years then next following, and from thenceforward until the churchwarden of any one of the said parishes, or the chairman of the vestry shall, by direction and in pursuance of a resolution of the inhabitants in vestry assembled, give twelve months' notice to the churchwardens and surveyor of each of the other parishes, and to the said district surveyor appointed by the said justices, and to the clerk of the peace of the county in which the said parishes are situate, of the intention of the said parish to cease to form a part of the said district: in which case, from and after the expiration of the said twelve months' notice, the union of the said parishes into such district as aforesaid, and



the appointment of the said district surveyor, shall cease and determine so far as may concern or be binding on the said parish so giving such notice as aforesaid. *Id.* s. 15.

And such district surveyor, when so appointed, shall for all the purposes of this Act, except the making, assessing, and levying the rate in and by this Act authorized, have, as far as the same are applicable, the same powers, and be subject and liable to the same duties, penalties, and forfeiture, as any surveyor elected under the provisions of this Act is invested with and liable to, and shall have the laying out and application of all the funds raised and levied under the authority of this Act ; but such district surveyor shall not expend any moneys levied in any one of the said united parishes except for the use and benefit of the parish in which it is so levied, unless with the consent of the inhabitants of such parish in vestry assembled, for the purpose of carrying on repairs or beneficial improvements under the provisions of this Act for the common benefit of the said united parishes ; and such district surveyor shall annually receive from each of the parishes such salary as shall have been agreed upon by the several parishes in manner aforesaid, which salary shall be paid to such district surveyor by the surveyor of the highways, out of the money raised in each of such parishes under the authority of this Act ; and in case of non-payment thereof, the same shall be recoverable from the surveyors of the highways of such parishes, to and for his own use, in the same manner as any forfeiture is recoverable under this Act. *Id.* s. 16.

And in each of the parishes so united into a district, a surveyor shall be elected, in addition to the district surveyor ; but such surveyor shall only make, assess, and levy the rate herein directed, and from time to time pay over the money arising therefrom to such district surveyor. *Id.* s. 17.

**2. The Duties of Surveyor.**

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- To widen Highways*, p. 227.
- To stop up or divert Highways*, p. 230.
- To erect Direction Posts*, p. 235.
- To remove Snow or other Obstructions*, p. 235.
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**Duty of Surveyor to repair Highways.**

<i>Duty to repair</i> , 217.	<i>Repairs, how compelled by the petty sessions</i> , 222.
<i>Materials purchased</i> , 217.	<i>Repairs, how compelled by indictment</i> , 224.
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**Duty to repair.]** The surveyor shall repair and keep in repair the several highways in the said parish for which he is appointed, and which are now or hereafter may become liable to be repaired by the said parish. 5 & 6 W. 4, c. 50, s. 6.

**Materials purchased.]** In every parish, the surveyor may, with the consent of the inhabitants in vestry, contract for purchasing, getting, and carrying the materials required for the repair of the highway; and if any surveyor shall have any part, share, or interest, directly or indirectly, in any contract or bargain for work or materials to be made, done, or provided, upon, for, or on account of any of the highways or other works whatsoever under his care or management, or shall upon his own account, directly or indirectly, use or let to hire any team, or use, or sell, or dispose of any materials, to be used or employed in making or repairing such highway or other works as aforesaid (unless a licence in writing for the sale of such materials, or to let to hire any such team, be first obtained,

from two justices of the peace in special sessions assembled), he shall forfeit for every such offence, on conviction, any sum not exceeding ten pounds, and be for ever after incapable of being employed as a surveyor with a salary under the authority of this Act. *Id.* s. 46.

And two ratepayers of any parish, within six days next after the annual appointment of the surveyor, by a notice in writing, may require him to call a meeting of the ratepayers for the purpose hereinafter mentioned, and he shall call such meeting accordingly; and if at such meeting a majority of the ratepayers shall signify their consent, it shall be lawful for the ratepayers keeping a team or teams of two or more horses or beasts of draught, to divide amongst themselves in proportion to the amount of rate to which they may respectively be assessed, the carrying of the material which may be required by the said surveyor for the repairs of the highways, and they shall be paid by the said surveyor for such carrying or task work, within one calendar month after having performed such service, after such rate per cubic yard of material per mile, as shall be fixed by the justices at their first meeting in special sessions for the highways after the twenty-fifth day of March in every year, which rate the said justices are hereby required to fix at such special sessions: such carrying to be performed at such times, &c., as the surveyor may direct (spring, seed-time, and harvest excepted): and in case the surveyor shall not approve of the manner in which such carrying shall be performed, the justices at a special sessions for the highways may hear the complaint of such surveyor in that respect, and award such pecuniary redress or forfeiture against the party offending as to them shall appear reasonable. *Id.* s. 35.

*Materials from waste lands.]* Every surveyor, in any waste lands or common ground, river or brook within the parish for which he shall be surveyor, or within any other parish wherein gravel, sand, stone, or other materials are respectively likely to be found (in case sufficient cannot be conveniently had within the parish where the same are to be employed, and sufficient shall be left for the use of the roads in such other parish), may search for, dig, get, and carry away the same, and likewise may gather stones lying upon any lands or grounds within the parish for such purpose, without making any satisfaction for the said materials; but satisfaction shall be made for all damages done to the lands of any person by carrying away the same, in the manner hereinafter directed for getting and carrying materials in inclosed lands; but no such stones shall be gathered without the consent of the owner of such lands, or a licence for that purpose from two justices at a special sessions for the highways, after having summoned such owner to come before them and heard

his reasons (if he shall appear and give any) for refusing his consent. *Id.* s. 51.

But this is not to extend to stones or other materials thrown up by the sea, commonly called beach, where the removal of the same would cause any damage or injury by inundation to the lands adjoining, or increased danger of encroachment by the sea. *Id.* s. 52.

As to the allotment of lands, for supplying materials for the repair of highways, upon the inclosure of waste lands, &c., see stat. 8 & 9 Vict. c. 118, s. 72. And where land shall have been allotted to parishes for the purpose of obtaining materials for the repair of the highways therein, and the materials in such land shall be exhausted, the surveyor of such parish may, with the consent of the vestry, and he shall with the consent in writing of the justices of the peace at a special sessions for the highways, sell and convey to some person whose lands adjoin thereto, or, if he refuse to purchase, to any other person, the said land, at and for such price as the said justices may deem fair and reasonable; and with the money arising therefrom, with such consent as aforesaid, shall purchase other lands in lieu thereof. *Id.* s. 48. And the same, as to all lands belonging to a parish, for the purpose of obtaining materials for the repair of the highways, and which have been used for that purpose, as soon as the materials are exhausted. 8 & 9 Vict. c. 118, s. 71.

*Materials from inclosed lands.]* Every such surveyor may, for the use aforesaid, by licence in writing from the justices at a special sessions for the highways, search for, dig, and get materials (if sufficient cannot be had conveniently within such waste lands, common grounds, rivers, or brooks), in or through any of the several or inclosed lands or grounds of any person whomsoever (such lands or grounds not being a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation, or inclosed wood not exceeding one hundred acres in extent), within the parish where the same shall be wanted,—or within any other parish adjoining or lying near to the highway for which such materials shall be required, if it shall appear to such justices that sufficient materials cannot be conveniently had in the parish where such highways lie,—or in the waste lands, or common grounds, rivers or brooks of such adjacent parish—and that a sufficient quantity of materials will be left for the use of the parish where the same shall be; the said surveyor making such satisfaction for the materials which may be got or taken away, and also for the damage done to such lands by the getting or carrying away the same, as shall be settled and ascertained by order of the justices at a special sessions for the highways. 5 & 6 W. 4, c. 50, s. 54. And lands, in the exclusive occupation of any one or more persons for

agricultural purposes, shall be deemed to be enclosed lands within the meaning of stat. 5 & 6 W. 4, c. 50, ss. 53, 54, as to obtaining materials for highways, and of a similar section of stat. 3 G. 4, c. 126, as to turnpike roads. 4 & 5 Vict. c. 51. This latter statute became necessary in consequence of the case of *Tapsall v. Crosskey*, 7 Mees. & W. 441, in which the court of Exchequer decided that the words "inclosed lands" in stat. 3 G. 4, c. 126, s. 98, meant lands actually inclosed and surrounded with fences, and did not extend to downs, not actually fenced off, although they were private property, and not subject to any right of common.

But no surveyor or other person shall dig, gather, get, take, or carry away any materials for making or repairing any highway, out of any inclosed land, until one calendar month's notice in writing, signed by the surveyor, shall have been given to the owner of the premises, or to his known agent, and to the occupier thereof, or left at the house or last or usual place of abode of such owner or agent, and occupier, to appear before the justices at a special sessions for the highways, to show cause why such materials shall not be had therefrom; "and in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not show sufficient cause to the contrary, such justices shall, if they think proper, authorize such surveyor or other person to dig, get, gather, take, and take away such materials at such time or times as to such justices shall seem proper; and if such owner, agent, or occupier shall neglect or refuse to appear by himself or his agent, the said justices shall and may (upon proof on oath of the service of such notice) make such order therein as they shall think fit, as fully and effectually to all intents and purposes as if such owner or occupier, or his agent had attended. *Id.* s. 53.

*Damage in getting materials.]* And if any surveyor shall dig or cause to be dug materials for the highways, whereby any bridge, mill, building, dam, highway, occupation road, ford, mines, or tin works, or other work, may be damaged or endangered, he shall forfeit for every such offence, on conviction, any sum not exceeding five pounds, at the discretion of the justices before whom the complaint thereof shall be made, notwithstanding his liability to any civil action to which he may make himself liable by such act. *Id.* s. 57.

Or, if any surveyor or person employed by him shall, by reason of the searching for, digging, or getting any materials for repairing any highways, make any pit or hole in lands, &c. wherein such materials shall be found, he shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired during such time as the said pit or hole shall continue open,—and within three days after such pit or hole shall be opened or made (where no materials shall

be found), cause the same to be forthwith filled up, levelled, and covered with the turf or clod which was dug out of the same,—and, where any such materials shall be found, within fourteen days after having dug up sufficient materials in such pit or hole, cause the same to be filled up or sloped down, and fenced off, if required by the owner of the land, and so continued; and every surveyor shall, within twenty-one days after he shall have been appointed to that office, cause all the said pits and holes, which shall then be open and not likely to be further useful, to be filled up or sloped down in manner aforesaid; and if they are likely to be further useful he shall secure the same by posts and rails or other fences to prevent accidents to persons or cattle; and in case such surveyor or person shall neglect to fill up, slope down, or fence off such pit or hole in manner and within the time aforesaid, he shall forfeit the sum of ten shillings for every such default; and in case such surveyor or person shall neglect to fence off such pit or hole, or to slope down the same, as hereinbefore directed, for the space of six days after he shall have received notice for either of those purposes from any justice of the peace, or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands as aforesaid, and such neglect and notice shall be proved upon oath before the justices at a special sessions for the highways, such surveyor or person shall forfeit and pay any sum not exceeding ten pounds for such neglect, to be determined and adjudged by such justices, and to be laid out and applied in the fencing off, filling up, or sloping down such pit or hole, and toward the repair of the roads in the parish where the offence shall be committed, in such manner as the said justices shall direct and appoint; which forfeiture, in case the same be not forthwith paid, shall be levied as other forfeitures are hereinafter directed to be levied. *Id.* s. 55. See *Morgan v. Leach et al.*, 12 Law J. 4, m.

Also, if any surveyor or district surveyor shall lay or cause to be laid any heap of stone or any other matter or thing whatsoever upon any highway, and allow the same to remain there at night to the danger or personal damage of any person passing thereon, all due and reasonable precaution not having been taken by the said surveyor to guard against the same, he shall forfeit for every such offence any sum not exceeding five pounds. *Id.* s. 56.

*Penalty for taking away materials.]* If any person shall, without the consent of the surveyor, take away materials which shall have been purchased, gotten, dug, or gathered for the repair or use of any highway,—or any materials out of any quarry which shall have been made, dug, or opened for the purpose of getting materials for any highway, before the

surveyor and his workmen shall have discontinued working therein for the space of six weeks (except the owner of any private grounds and persons authorized by such owner to get materials in such quarry for his own private use, and not for sale): every person so offending shall, for every such offence, forfeit and pay, on conviction thereof, any sum not exceeding ten pounds. *Id.* s. 47.

*Repairs, how compelled by the petty sessions.*] If any highway is out of repair, or is not well and sufficiently repaired and amended, and information thereof, on the oath of one credible witness, is given to any justice of the peace, such justice shall issue a summons, requiring the *surveyor of the parish, or other person, or body politic or corporate*, chargeable with such repairs, to appear before the justices at some special sessions, for the highways, to be held within the division in which the said highway may be situate; and the said justices shall either appoint some competent person to view the same, and report thereon to the justices in special sessions on a certain day and place to be then fixed, at which the said surveyor of the highways or other party as aforesaid shall be directed to attend, or the said justices shall fix a day whereon they or any two of them shall attend to view the said highway; and if to the justices, at such petty sessions, it shall appear, either on the report of the said person so appointed by them to view, or on the view of such justices, that the said highway is not in a state of thorough and effectual repair, they the said justices at such last-mentioned special sessions, shall convict the said surveyor or other party liable to the repair of the said highway in any penalty not exceeding five pounds, and shall make an order on the said surveyor or other person or bodies politic or corporate liable to repair such highway, by which order they shall limit and appoint a time for the repairing of the same, and in default of such repairs being effectually made within the time so limited, the said surveyor, or such other person or body politic or corporate as aforesaid, shall forfeit and pay to some person, to be named and appointed in a second order, a sum of money to be therein stated, and which shall be equal in amount to the sum which the said justices shall, on the evidence produced before them, judge requisite for repairing such highway, which money shall be recoverable in the same manner as any forfeiture is recoverable under this Act, and such money when recovered shall be applied to the repair of such highway; and in case more parties than one are bound to repair any such highway, the said justices shall direct in their said order what proportion shall be paid by each of the said parties: but if the said highway so out of repair is a part of the *turnpike road*, the said justices shall summon the *treasurer or surveyor or other officer of such turnpike road*,

and the order herein directed to be made shall be made on such treasurer or surveyor or other officer as aforesaid, and the money therein stated shall be recoverable as aforesaid : provided nevertheless that the said justices shall not have power to make such order as aforesaid in any case where the duty or obligation of repairing the said highway comes in question. *Id.* s. 94. In any conviction or order under this section, it must appear that the highway in question is within the division for which the special sessions are holden ; for otherwise it would not appear that the justices had jurisdiction. See *R. v. Martin et al.*, 13 Law. J. 45, *m.*, *post*, p. 224.

And if any surveyor or other person shall be summoned before any justice, to answer any information or complaint exhibited or made against him touching or concerning any offence by him committed against the provisions of this Act, or for any supposed neglect of duty, and such surveyor or other person be convicted thereof, such justice may order the payment by such surveyor or other person of all costs or proceedings against him ; but in case such information or complaint shall afterwards be withdrawn, or quashed, or dismissed, or if the defendant shall be acquitted, such justices may order that the person exhibiting such information or complaint shall pay to the defendant all such costs as to such justice shall seem reasonable. *Id.* s. 97.

In default of immediate payment of the sum so awarded, it shall be lawful for such justices to cause the same to be levied by distress and sale of the goods and chattels of the person ordered to pay the same, together with the costs of such distress and sale ; and if sufficient goods and chattels cannot be found, it shall be lawful for such justices to commit such person to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding one calendar month, unless the sum so awarded, together with all costs and expenses, shall be sooner paid and satisfied. *Id.* s. 97.

And no fine, issue, penalty, or forfeiture, for not repairing the highway, or not appearing to any indictment for not repairing the same, shall hereafter be returned into the court of Exchequer or other court, but shall be levied by and paid into the hands of such person residing in or near the parish where the road shall lie, as the justices or court imposing such fines, &c., shall order and direct, to be applied towards the repair and amendment of such highway ; and the person so ordered to receive such fine shall receive, apply, and account for the same, according to the direction of such justices or court, or in default thereof shall forfeit double the sum received ; and if any fine, &c., to be imposed for not repairing the highway, or not appearing as aforesaid, shall hereafter be levied on any inhabitant of such parish, township, or place, then such inhabitant shall and may make his complaint to the justices at a



special sessions for the highways; and the said justices are hereby empowered and authorized, by warrant under their hands, to make an order on the surveyor of the parish for payment of the same out of the money receivable by him for the highway rate, and that he shall within two months next after service of the said order on him, pay unto such inhabitant the money therein mentioned. *Id.* s. 96.

But if on the hearing of any such summons respecting the repair of any highway, the duty or obligation of such repairs is denied by the surveyor on behalf of the inhabitants of the parish, or by any other party charged therewith, such justices shall direct a bill of indictment to be preferred, and the necessary witnesses in support thereof to be subpoenaed, at the next assizes to be holden in and for the said county, or at the next general quarter sessions of the peace for the county, riding, division, or place wherein such highway shall be, against the inhabitants of the parish or the party to be named in such order, for suffering and permitting the said highway to be out of repair; and the costs of such prosecution shall be directed by the judge of assize, before whom the said indictment is tried, or by the justices at such quarter sessions, to be paid out of the rate made and levied in pursuance of this Act, in the parish in which such highway shall be situate: provided nevertheless, that it shall be lawful for the party against whom such indictment shall be so preferred at the quarter sessions as aforesaid, to remove such indictment by *certiorari* or otherwise, into His Majesty's court of King's Bench. *Id.* s. 95. The order under this section must show that the highway was situate within the division for which the special sessions was holden; otherwise the court of quarter sessions will not be warranted in allowing the costs of the prosecution. *R. v. Martin et al.*, 13 Law J. 45, *m.*; 2 Q. B. 1037, *n.*

*Repairs, how compelled by indictment.]* Allowing a public highway to be out of repair, is a nuisance and a misdemeanor in the inhabitants of the parish or township, or in the corporation or individual, liable by law to repair it. And for this of course an indictment will lie at common law. And the clause in the Highway Act already mentioned (sect. 94, *ante*, p. 222), which enables justices at petty sessions to entertain a complaint upon this subject, where the liability to repair is not disputed, does not prevent parties proceeding by indictment in the first instance.

*Width of highways.]* The surveyor shall make, support, and maintain every public cartway, leading to any market town, twenty feet wide at the least, and every public horseway eight feet wide at the least, and shall support and maintain every public footway by the side of any carriage way or cart

way three feet at the least, if the ground between the fences including the same will admit thereof: but nothing herein contained shall require any surveyor to make or form any public footway, without the consent of the inhabitants in vestry assembled. *Id.* s. 80.

*Width of gates.]* If any gate across any public cartway shall be less than ten feet wide, or any gate across any public horse-way shall be less than five feet wide, clear between the posts thereof, then and in every such case, upon notice in writing from the surveyor to the person to whom such gate shall belong, left at the dwelling-house of such person or his steward or agent, requiring him to enlarge the same,—if such person shall neglect for the space of twenty-one days after such notice shall have been left as aforesaid to remove or enlarge such gate, he shall forfeit a sum not exceeding ten shillings for every day he shall so neglect to remove or enlarge such gate as aforesaid. *Id.* s. 81.

*Way, whilst highway repairing.]* The surveyor may make a road through the grounds adjoining to any ruinous or narrow part of any highway (not being the site or ground whereon any house stands, nor being a garden, lawn, yard, court, park, paddock, plantation, planted walk or avenue to any house or inclosed ground set apart for building ground, or as a nursery for trees), to be made use of as a public highway, whilst the old road is repairing or widening, making such recompense to the proprietor or occupier of such grounds for the damages they may thereby sustain as the justices at a special sessions for the highways assembled may think reasonable, such sum so awarded as a recompense to be recoverable in the same manner as any fines and forfeitures are recoverable under this Act. *Id.* s. 25.

*Parish, how compelled to contribute to repair of turnpike roads.]* By stat. 4 & 5 Vict. c. 59 [*continued to the present time by various Acts*], the justices at any special sessions for the highways, upon information exhibited before them by the clerk or treasurer of any turnpike trust, that the funds of the said trust are insufficient for the repairs of the turnpike roads within any parish [township, &c.], (notice in writing of such intended information having been previously given on the part of such clerk or treasurer to the parish surveyor twenty-one days at least before such special sessions), may examine the state of the revenues and debts of such turnpike trusts, and inquire into the state and condition of the repairs of the roads within the same, and also ascertain the length of the roads, including turnpike roads, within such parish, and how much of such road is turnpike road; and if after such examination it shall appear to the said justices necessary or

expedient for the purposes of any turnpike road so to do, then they may adjudge and order what portion, if any, of the rate or assessment levied or to be levied by virtue of stat. 5 & 6 W. 4, c. 50, shall be paid by the said parish surveyor, and at what time or times, to the said commissioners or trustees, or to their treasurer or other officers appointed by them on that behalf,—such money to be wholly laid out in the actual repairs of such part of such turnpike road as lies within the parish from which it was received. Sect. 1. Where the funds, which would otherwise be sufficient for the repair of the turnpike road, were exhausted by paying the interest on a debt secured upon the tolls, the court held that in such a case the justices had the power to make an order under this Act. *R. v. White*, 4 Q. B. 101; 12 Law J. 31, *m.* In an order under this section, it must appear on the face of it that it was made at a special sessions of the highways for the division within which the turnpike road is situate. *R. v. Morice et al.*, 14 Law J. 75, *m.*

And if any such parish surveyor shall refuse or neglect to pay over such portion of the said rate or assessment, at the time or times and in the manner mentioned in the order of the said justices, the same shall and may be levied upon the goods and chattels of such surveyor, in such manner as penalties and forfeitures are by stat. 5 & 6 W. 4, c. 50, authorized to be levied. *Id.* s. 2.

And if any person shall think himself aggrieved by any order, judgment or determination made, or by any matter or thing done, by any justices of the peace at any such special sessions in pursuance of this Act, such person shall be at liberty to make his complaint thereof by appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county, riding, division, or place wherein the cause of such complaint shall arise, such applicant first giving to such justices ten days' notice in writing of the grounds of such appeal, within six days after such order, judgment, or determination shall be made or given as aforesaid [see *R. v. JJ. of Derbyshire*, 14 Law J. 84], who are hereby required, within forty-eight hours after the receipt of such notice, to return all proceedings whatever had before them respectively, touching the matter of such appeal, to the said justices at the general quarter sessions aforesaid; and that in case of such appeal, the said justices at the said quarter sessions, upon due proof of such notice and statement having been given as aforesaid, shall hear and determine such appeal; and the said justices at the said quarter sessions shall have power to award such costs to the party appealing or appealed against, as they the said justices shall think proper, such costs to be levied and recovered in the same manner as any penalties or forfeitures are recoverable under the said recited Act; and no proceeding

to be had or taken in pursuance of this Act shall be quashed or vacated for want of form: provided always, that in case there shall not be time to give such notice as aforesaid before the next sessions to be holden after such order, determination or judgment, then and in every such case such appeal may be made to the justices at the next following sessions, who shall proceed to determine such appeal in manner as aforesaid: provided always, that it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid, nor on the hearing of such appeal to go into or give evidence of any other grounds of appeal than those set forth in such statement as aforesaid. *Id.* s. 3. Upon an appeal under this Act, a justice who is a trustee of the turnpike cannot vote. *R. v. JJ. of Hertfordshire*, 14 Law J. 176, *qb.*

And by stat. 3 G. 4, c. 126, s. 110, when the inhabitants of any parish, township, or place shall be indicted for not repairing any highway, being turnpike road, and the court before whom such indictment shall be preferred shall impose a fine for the repair of such road, such fine shall be apportioned, together with the costs and charges attending the same, between the inhabitants of such parish, township, or place, and the trustees or commissioners of such turnpike road, in such manner as to the said court, upon consideration of the circumstances of the case, shall seem just; and it shall and may be lawful for such court to order the treasurer of such turnpike road to pay the sum so proportioned for such turnpike road, out of the money then in his hands or next to be received by him, in case it shall appear to such court, from the circumstances of such turnpike debts and revenues, that the same may be paid without endangering the securities of the creditors who have advanced their money upon the credit of the tolls to be raised thereupon; which order shall be binding upon such treasurer, and he is hereby authorized and required to obey the same.

#### *Duty of Surveyor to widen Highways.*

Where it shall appear, upon the view of two justices of the peace, that any highway is not of sufficient breadth, and might be widened and enlarged, such justices shall and they are hereby empowered, within their respective divisions, to order such highway respectively to be widened and enlarged in such manner as they shall think fit, so that the said highway, when widened and enlarged, shall not exceed thirty feet in breadth; but neither of the said powers shall extend to pull down any house or building, or to take away the ground of any garden, lawn, yard, court, park, paddock, planted walk, plantation, or avenue to any house, or any inclosed ground set apart for

building ground or as a nursery for trees ; and for the satisfaction of the person, who is seised or possessed of or interested in his own right, or in trust for any other person in the said ground that shall be laid into the said highway respectively so to be widened and enlarged, the said surveyor, under the direction and with the approbation of the said justices in writing, shall and is hereby empowered to make an agreement with him for the recompense to be made for such ground, and for the making such new ditches and fences as shall be necessary, according and in proportion to his interests therein ; and also with any other person, body politic or corporate, that may be injured by the widening and enlarging such highway, for the satisfaction to be made to them as aforesaid ; and if the said surveyor, under the direction and with the approbation of the said justices, cannot agree with the said person, or if he cannot be found, or shall refuse to treat or take such recompense or satisfaction as shall be offered to him by such surveyor, then the justices of the peace at any general quarter sessions to be holden for the limit wherein such ground shall lie, upon certificate in writing signed by the justices making such view as aforesaid of their proceedings in the premises, and upon proof of fourteen days' notice in writing having been given by the surveyor of such parish to the owner, occupier, or other person, interested in such ground, or to his guardian, trustee, clerk or agent, signifying an intention to apply to such quarter sessions for the purpose of taking such ground, shall " impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions : and the said jury shall, upon their oaths, to the best of their judgment, assess the damages to be given and recompense to be made to the owners and others interested as aforesaid in the said ground for their respective interests, as they shall think reasonable, not exceeding forty years' purchase for the clear yearly value of the ground so laid out, and likewise such recompense as they shall think reasonable for the making of new ditches and fences on the side of the said highway that shall be so widened and enlarged, and also satisfaction to any person, body politic or corporate, that may be otherwise injured by the widening and enlarging the said highways respectively ;" and upon payment or tender of the money so to be awarded and assessed to the person entitled to receive the same, or leaving it in the hands of the clerk of the peace of such limit, in case such person cannot be found or shall refuse to accept the same, for the use of the owners of or others interested in the said ground, the interest of the said person, body politic or corporate, in the said ground, shall be for ever divested out of them ; and the said ground after such agreement or verdict as aforesaid shall be esteemed and taken to be a public highway to all

intents and purposes whatsoever; saving nevertheless to the owner of such ground all mines, minerals, and fossils lying under the same which can or may be got without breaking the surface of the said highway, and also all timber and wood growing upon such ground, to be felled and taken by such owner within one month after such order shall have been made, or in default thereof to be felled by the said surveyor within the respective months aforesaid, and laid upon the land adjoining, for the benefit of the said owner; and where there shall not appear sufficient money in the hands of the surveyor for the purpose aforesaid, then the said two justices in cases of agreement, or the said court of quarter sessions after such verdict as aforesaid, shall direct the surveyor to make, collect, and levy an equal rate in the same manner as the rate by this Act authorized to be made, and to pay the money to the person so interested, in such manner as the said justices, or court of quarter sessions respectively shall direct and appoint, and the money thereby raised shall be employed and accounted for according to the order and direction of the said justices or court of quarter sessions respectively for and towards the purchasing the land to widen and enlarge the said highway, and for making the said ditches and fences, and also satisfaction for the damages sustained thereby; provided that no such rate to be made in any one year shall exceed one-third part of the rate by this Act authorized to be levied, in addition to the rate for the repair of the highways. 5 & 6 W. 4, c. 50, s. 82.

And in case such jury shall deliver a verdict for more moneys as a recompense for the right, interest, or property of any person in such lands, or for the making such fence, or for such damage or injury to be sustained by him as aforesaid, than what shall have been proposed and offered by the said surveyor before such application to the said court of quarter sessions as aforesaid, that then and in such case the costs and expenses attending the said several proceedings shall be borne and paid by the surveyor, out of the moneys in his hands or to be assessed and levied by virtue and under the powers of this Act; but if such jury shall give and deliver a verdict for no more or for less moneys than shall have been so offered and proposed by the said surveyor before such application to the said court of quarter sessions, that then the said costs and expenses shall be borne and paid by the person who shall have refused to accept the recompense and satisfaction so offered to him as aforesaid. *Id.* s. 83.

And the powers and provisions in this Act contained with respect to the widening and enlarging, diverting, turning, or stopping up any highway, shall be applicable to all highways which any person, body politic or corporate, is or are bound to repair by reason of any grant, tenure, limitation, or appointment

of any charitable gift or otherwise howsoever ; and that when such last-mentioned highways are so widened or enlarged, turned or diverted, the same shall and may, by an order of the justices at a special sessions for the highways, be placed under the control and care of the surveyor of the parish in which such highways may be situate, and shall be from time to time thereafter repaired and kept in repair by the said parish : provided also, that the said highways so widened, enlarged, diverted, or turned, shall be viewed by two justices of the peace, who shall make a report thereof to the justices at a special sessions for the highways ; and such last-mentioned justices shall, by an order under their hands, fix the proportionate sum which shall be annually paid, or shall fix a certain sum to be paid by such person, bodies politic or corporate, his or their heirs, successors, or assigns, to the said surveyors of the parish, in lieu of thereafter repairing the said part of the said old highway ; and the order of the said last-mentioned justices shall be and continue binding on all such persons, bodies politic or corporate, their heirs, successors, or assigns ; and in default of payment thereof, the said surveyor shall proceed for the recovery of the same, in the same manner as any penalties and forfeitures are recoverable under this Act. *Id.* s. 93.

*Duty of Surveyor to stop up or divert Highways.*

*Previous application to justices, 230.*

*Justices' view and certificate, 231.*

*Order where there is more than one highway, 232.*

*Appeal, 232.*

*Order of sessions, 234.*

*Liability to repair the new way, 235.*

*Previous application to justices.]* When the inhabitants in vestry assembled shall deem it expedient that any highway should be stopped up, diverted, or turned, either entirely or reserving a bridleway or footway along the whole or any part or parts thereof, the chairman of such meeting shall, by an order in writing, direct the surveyor to apply to two justices to view the same, and shall authorize him to pay all the expenses attending such view, and the stopping up, diverting, or turning such highway, either entirely or subject to such reservation as aforesaid, out of the money received by him for the purposes of this Act : but if any other party shall be desirous of stopping up, diverting, or turning any highway as aforesaid, he shall, by a notice in writing, require the surveyor to give notice to the churchwardens to assemble the inhabitants in vestry, and to submit to them the wish of such per-

son; and if such inhabitants shall agree to the proposal, the said surveyor shall apply to the justices as last aforesaid for the purposes aforesaid; and in such case the expenses aforesaid shall be paid to such surveyor by the said party, or be recoverable in the same manner as any forfeiture is recoverable under this Act; and the said surveyor is hereby required to make such application as aforesaid. *Id.* s. 84. As to the highways which may be thus stopped up or diverted, see sect. 83, *ante*, p. 230.

*Justices' view and certificate.*] And when it shall appear upon such view of such two justices of the peace [and which view must be had by them jointly, *R. v. JJ. of Cambridge-shire*, 4 Ad. & El. 111], that any public highway may be diverted and turned, either entirely or subject as aforesaid, so as to make the same nearer or more commodious to the public, and the owner of the lands, through which such new highway shall be so proposed to be made, shall consent thereto by writing under his hand, or if it shall appear upon such view that any public highway is unnecessary, the said justices shall direct the surveyor to affix a notice in the form or to the effect of schedule (No. 19) to this Act annexed, in legible characters, at the place and by the side of each end of the said highway from whence the same is proposed to be turned, diverted, or stopped up, either entirely or subject as aforesaid, and also to insert the same notice in one newspaper published or generally circulated in the county where such highway shall lie, for four successive weeks next after the said justices have viewed the same, and to affix the like notice on the door of the church of every parish in which such highway, or any part thereof, shall lie, on four successive Sundays next after the making such view; and the said several notices having been so published, and proof thereof having been given to the satisfaction of the said justices, and a plan having been delivered to them at the same time particularly describing the old and the proposed new highway, by metes, bounds and admeasurement thereof (which plan shall be verified by some competent surveyor), the said justices shall proceed to certify under their hands the fact of their having viewed the said highway as aforesaid, and that the proposed new highway is nearer or more commodious to the public (see *R. v. Jones*, 12 Ad. & El. 684); and if nearer, the said certificate shall state the number of yards or feet it is nearer, or if more commodious, the reasons why it is so; and if the highway is proposed to be stopped up as unnecessary, either entirely or subject as aforesaid, then the certificate shall state the reason why it is unnecessary; and the said certificate of the said justices, together with the proof and plan so laid before them as aforesaid, shall, as soon as conveniently may be after the making of the said certificate, be lodged with



the clerk of the peace for the county in which the said highway is situated, and shall (at the quarter sessions which shall be holden for the limit within which such highway shall lie, next after the expiration of four weeks from the day of the said certificate of the said justices having been lodged with the clerk of the peace as aforesaid), be read by the said clerk of the peace in open court; and the said certificate, together with the proof and plan aforesaid, as well as the consent in writing of the owner of the land through which the new highway is proposed to be made, shall be enrolled by the clerk of the peace amongst the records of the said court of quarter sessions: provided always, that any person whatever shall be at liberty, at any time previous to the said quarter sessions, to inspect the said certificate and plan as aforesaid lodged with the said clerk of the peace, and to have a copy thereof, on payment to the clerk of the peace at the rate of sixpence per folio, and a reasonable compensation for the copy of the plan. *Id.* s. 85.

The following is the form of the notice for diverting, &c.:—

*Notice is hereby given, that on the — day of — next, application will be made to Her Majesty's justices of the peace assembled at quarter sessions in and for the county of —, at —, for an order for [if the order be for turning, diverting, and stopping up, &c., here state it, and describe the road ordered to be turned, diverted, and stopped up; if the order be for stopping up a useless road, here state it, and describe the road ordered to be stopped up; and that the certificate of two justices having viewed the same, &c., with the plan of the old and proposed new highway, will be lodged with the clerk of the peace for the said county, on the — day — next.*

*A. B.            } Surveyor [or surveyors] of the  
C. D. &c.,        } parish of —.*

*Order where there is more than one highway.] And where it is proposed to stop up or divert more than one highway, which highways shall be deemed to be so connected together as that they cannot be separately stopped or diverted without interfering one with the other, it shall be lawful to include such different highways in one order or certificate. Id.* s. 86.

*Appeal.] When any such certificate shall have been so given as aforesaid, it shall and may be lawful for any person, who may think that he would be injured or aggrieved if any such highway should be ordered to be diverted or turned or stopped up, either entirely or subject as aforesaid, and such new highway set out and appropriated in lieu thereof as aforesaid, or if any unnecessary highway should be ordered to be stopped up*

as aforesaid, to make his complaint thereof by appeal to the justices of the peace at the said quarter sessions, upon giving to the surveyor ten days' notice in writing of such appeal, together with a statement in writing of the grounds thereof, who is hereby required within forty-eight hours after the receipt of such notice, to deliver a copy of the same to the party by whom he was required to apply to the justices to view the said highway; provided that in all cases where the said surveyor shall have been directed by the inhabitants in vestry assembled to apply to such justices as aforesaid, then the said surveyor shall not be required to deliver a copy of such notice to any party; but it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid, nor on the hearing of such appeal to go into or give evidence of any other grounds of appeal than those set forth in such statement as aforesaid. *Id.* s. 88.

And in case of such appeal, the justices of the said quarter sessions shall,—for the purpose of determining whether the proposed new highway is nearer or more commodious to the public, or whether the public highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or whether the said party appealing would be injured or aggrieved,—impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions; and if, after hearing the evidence produced before them, the said jury shall return a verdict that the proposed new highway is nearer or more commodious to the public, or that the public highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or that the party appealing would not be injured or aggrieved, then the said court of quarter sessions shall dismiss such appeal, and make the order herein mentioned for diverting and turning and stopping up such highway either entirely or subject as aforesaid, or for diverting, turning, and stopping up of such old highway, or for stopping up such unnecessary highway either entirely or subject as aforesaid; but if the said jury shall return a verdict that the proposed new highway is not nearer or not more commodious to the public, or that the highway so intended to be stopped up, either entirely or subject as aforesaid, is not unnecessary, or that the party appealing would be injured or aggrieved, then the said court of quarter sessions shall allow such appeal, and shall not make such order as aforesaid. *Id.* s. 89. Where upon an appeal against a certificate of justices for stopping up a highway, it appeared that the justices had certified that the proposed line was nearer and more commodious than the old one, and the grounds of appeal were, that the proposed line was not nearer and more commodious,—a jury being impanelled as directed

by the Act, found that the proposed new way was nearer, but not more commodious than the old one : the court held that upon this finding, the sessions could not make an order for stopping up the way ; the justices having certified that the way was nearer *and* more commodious, both ought to have been proved upon the appeal. *R. v. Skiles et al.*, 10 L. J. 157, *m.* ; 1 Q. B. 919.

In the event of any appeal being brought against the whole or any part of any order or certificate for diverting more highways than one, the court may decide upon the propriety of confirming the whole or any part of such order or certificate, without prejudice to the remaining part thereof. *Id.* s. 87.

And the court of quarter sessions is hereby authorized and required to award to the party giving or receiving notice of appeal, such costs and expenses as shall be incurred in prosecuting or resisting such appeal, whether the same shall be tried or not ; and such costs and expenses shall be paid by the surveyor or other party as aforesaid at whose instance the notice for diverting and turning or stopping up the highway shall have been given ; and in case the said surveyor or other party as aforesaid shall not appear in support thereof, the said court of quarter sessions shall award the costs of the appellant to be paid by such surveyor or other party as aforesaid, and such costs shall be recoverable in the same manner as any penalties or forfeitures are recoverable under this Act. *Id.* s. 90. If the appellant in such an appeal be ordered to pay costs, his not paying them is not such an offence as renders the party liable to a summary conviction under the 103rd section of the Highway Act. *Selwood v. Mount et al.*, 10 Law J. 121, *m.*

*Order of sessions.*] But if no such appeal be made, or being made shall be dismissed as aforesaid, then the justices at the said quarter sessions shall make an order to divert and turn and stop such highway, either entirely or subject as aforesaid, or to divert, turn, and stop up such old highway, and to purchase the ground and soil for such new highway, or to stop up such unnecessary highway, either entirely or subject as aforesaid, by such ways and means, and subject to such exceptions and conditions in all respects, as in this Act is mentioned in regard to highways to be widened ; and the proceedings thereupon shall be binding and conclusive on all persons whomsoever ; and the new highway so to be appropriated and set out, shall be and for ever after continue a public highway to all intents and purposes whatsoever ; but no old highway (except in the case of stopping up of such useless highway as herein is mentioned) shall be stopped up, until such new highway shall be completed and put into good condition and repair, and so certified by two justices of the peace upon view thereof, which certificate shall be returned to the

clerk of the peace, and by him enrolled amongst the records of the court of quarter sessions next after such order as aforesaid shall have been made pursuant to the directions hereinbefore contained. 5 & 6 W. 4, c. 50, s. 91.

*Liability to repair the new way.*] Where a highway shall have been turned or diverted under the provisions of this Act, the parish or other party which was liable to repair the old highway, shall be liable to the repair of the new highway, without any reference whatever to its parochial locality. *Id.* s. 92.

*Duty of Surveyor to erect Direction Posts, &c.*

The surveyor of every parish shall, with the consent of the inhabitants in vestry, or by the direction of the justices at a special sessions for the highways, cause direction posts to be erected, as well as stones or posts to mark the boundaries of the highway, containing the name of the parish wherein situate; and such surveyor of every parish shall, at the several approaches to such parts of any highways as are subject to deep or dangerous floods, cause to be erected graduated stones or posts, for the guiding of travellers in the best and safest track through the floods; and also to secure horse causeways and foot causeways, by posts, blocks, or stones fixed in the ground, or by banks of earth cast up, or otherwise from being passed over and spoiled by waggons, wains, carts, or carriages. *Id.* s. 24.

*Duty of Surveyor to remove Snow or other Obstructions.*

If any impediment or obstruction shall arise in any highways from accumulation of snow, or from the falling down of the banks on the sides of such highways, or from any other cause, the surveyor is required from time to time, and within twenty-four hours after notice thereof from any justice of the peace of the county in which the parish may be situate, to cause the same to be removed. *Id.* s. 26.

*Duty of Surveyor to prosecute for Nuisances.*

<i>Trees near the highway, 236.</i>	<i>the road, making fires, &amp;c.</i>
<i>Hedges, 236.</i>	240.
<i>Ditches, 237.</i>	<i>Matters laid on highways,</i>
<i>Encroachments, 239.</i>	241.
<i>Steam-engines, windmills,</i>	<i>Cattle straying on highways,</i>
<i>&amp;c., 239.</i>	242.
<i>Gates on railways, 240.</i>	<i>Nuisances at common law,</i>
<i>Riding on footpaths, injuring</i>	243.

*Trees near the highway.*] No tree, bush, or shrub shall hereafter be planted on any carriageway or cartway, or within the distance of fifteen feet from the centre thereof, but the same shall respectively be cut down, grubbed up, and carried away by the owner or occupier of the land or soil, within twenty-one days after notice to him or his agent by the surveyor, on pain of forfeiting for every neglect the sum of ten shillings. *Id.* s. 64.

And where in this Act any matter or thing is directed or forbidden to be done within a certain distance of the centre of the highway, that portion of ground shall be deemed and taken to be the highway, which has been maintained by the surveyor as highway, and repaired with stones or other materials used in forming highways, for six months immediately preceding; and the centre of the highway shall be the middle of such highway, where a line being drawn along the highway, or a point marked, an equal number of feet of highway, which have been so maintained and repaired as aforesaid for twelve months before, shall be found on each side of such line or mark. *Id.* s. 63.

*Hedges.*] If the surveyor shall think that any carriageway or cartway is prejudiced by the shade of any hedges, or by any trees (except those trees planted for ornament, or for shelter to any hop-ground, house, building, court yard, of the owner thereof), growing in or near such hedges or other fences, and that the sun and wind are excluded from such highway, to the damage thereof,—or if any obstruction is caused in any carriageway or cartway by any hedge or tree,—it shall be lawful for any one justice of the peace on the application of the said surveyor, to summon the owner of the land on which such hedges or trees are growing to appear before the justices at a special sessions for the highways, to show cause why the said hedges are not cut, pruned, or plashed, or such trees not pruned or lopped, in such manner that the carriageway or cartway shall not be prejudiced by the shade thereof, and that the sun

and wind may not be excluded from the same to the damage thereof, or why the obstruction caused therein should not be removed; and the question as to the cutting, pruning, or plashing such hedges, or the pruning and lopping such trees, or the removal of such obstruction, shall, upon proof of the service of such summons, and whether the said owner attend or not, be determined at the discretion of such last-mentioned justices; and if such justices shall order and direct that such hedges shall be cut, pruned, or plashed, or such trees pruned or lopped, in manner aforesaid, or such obstruction removed, the said owner shall comply therewith within ten days after a copy of such order shall have been left at the usual place of abode of the said owner or of his steward or agent, and in default thereof shall forfeit, on conviction, a sum not exceeding forty shillings; and the said surveyor, if the order of the said justices is not complied with, shall cut, prune, or plash such hedges, and prune and lop such trees, for the benefit and improvement of the highway, and remove such obstruction as aforesaid, to the best of his skill and judgment and according to the true intent and meaning of this Act: and the said surveyor shall be reimbursed by the owner as aforesaid what charges and expenses he shall be at, in cutting, pruning, and plashing such hedges, and pruning and lopping such trees, and the removal of such obstruction, over and above the said forfeiture; and it shall and may be lawful for the justices at a special sessions for the highways, upon proof to them made upon oath, to levy as well the expenses of cutting, pruning, and plashing such hedges, or pruning and lopping such trees, or removal of such obstructions as aforesaid, as the several respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, in such manner as distresses and sales for forfeitures are authorized and directed to be levied by virtue of this Act. *Id.* s. 65. See *Brooke v. Jenny et al.*, 11 Law J. 10, *m.*; 13 *id.* 376, *qb.*; 2 Q. B. 265.

But no person shall be compelled, nor any surveyor permitted, to cut or prune any hedge at any other time than between the last day of September, and the last day of March; and no person shall be obliged to fell any timber trees growing in hedges at any time whatsoever, except where the highways shall be ordered to be widened or enlarged as herein mentioned, or then to cut down or grub up any oak tree growing in such highway or in such hedges, except in the months of April, May, or June, or any ash, elm, or other trees in any other months than December, January, February, or March. *Id.* s. 66.

*Ditches.]* The said surveyor, district surveyor, or assistant surveyor shall have power to make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses, and also to

make and lay such trunks, tunnels, plats, or bridges, as he shall deem necessary, in and through any lands adjoining or lying near to any highway, upon paying the owner or occupier of such lands (provided they are not waste or common), for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in inclosed lands or grounds are herein (*ante*, p. 219) directed to be settled and paid. *Id.* s. 67. See *Peters et al. v. Clarkson et al.*, 13 Law J. 153, *m.* ; 7 Man. & Gr. 548.

And if any owner, occupier, or other person shall alter, obstruct, or in any manner interfere with any such ditches, gutters, drains, or watercourses, trunks, tunnels, plats, or bridges, after they shall have been made by or taken under the charge of such surveyor, or district surveyor, and without his authority and consent, such owner, occupier, or other person shall be liable to reimburse all charges and expenses which may be occasioned by reinstating and making good the work so altered, obstructed, or interfered with, and shall also forfeit any sum not exceeding three times the amount of such charges and expenses. *Id.* s. 68.

It is further enacted by the 11 & 12 Vict. c. 123, s. 6, that the surveyor, or district or assistant surveyor, trustees or surveyors, *shall* scour, cleanse, and keep clear, or cause to be scoured, cleansed, and kept clear, as far as may be practicable, all open ditches, gutters, drains, and watercourses upon, adjoining, or by or along the sides of any highway ;

And any sewage, drainage, soil, filth, or other matter or thing whatsoever which shall be removed by any such surveyor, district or assistant surveyor, trustees or surveyors, from any such ditch, gutter, drain, or watercourse, in scouring, cleansing, and keeping clear the same, shall be disposed of by such surveyor, assistant or district surveyor, trustees or surveyors, and the proceeds arising therefrom shall be applied towards the repair of the highway within the parish or place in which such removal shall have taken place ;

And the provisions hereinbefore contained with respect to ditches, gutters, drains, and watercourses upon, adjoining, or by or along the side of highways, shall, in so far as the same relate to England, be deemed to be part of the said Act relating to highways in England, and in so far as the same relate to Scotland shall be deemed to be part of the said Act relating to highways in Scotland.

Whosoever shall suffer any sewage, drainage, soil, filth, or any matter or thing of a noxious or offensive nature, to run or flow into or to remain in any open ditch, gutter, drain, or watercourse, so as to be a nuisance to or injurious to the health of any person, from any dwelling-house, building, or other premises which shall not have been occupied before the passing of this Act, or from any privy or watercloset which shall not

have been constructed before that time, shall be deemed guilty of a *misdemeanor*, or in Scotland of an offence punishable by fine or imprisonment. *Id.* s. 7.

And shall, in addition, be liable for every such offence to a penalty not exceeding *five pounds* for every day during which the offence is continued.

*Encroachments.*] If any person shall encroach, by making or causing to be made any building, hedge, ditch or other fence, on any carriageway or cartway, within the distance of fifteen feet from the centre thereof, every person so offending shall forfeit, on conviction, for every such offence, any sum not exceeding forty shillings; and the surveyor who hath the care of any such carriageway, or cartway, shall cause such building, hedge, ditch, or fence to be taken down or filled up at the expense of the person to whom the same shall belong; and the justices at a special sessions for the highways, upon proof to them made upon oath, shall levy as well the expenses of taking down such building, hedge, or fence, or filling up such ditch as aforesaid, as the several and respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, in such manner as distresses and sales for forfeitures are authorized and directed to be levied by virtue of this Act. 5 & 6 W. 4, c. 50, s. 69.

*Steam-engines, windmills, &c.*] It shall not be lawful for any person to sink any pit or shaft, or to erect or cause to be erected any steam-engine, gin, or other like machine, or any machinery attached thereto, within the distance of twenty-five yards, nor any windmill within fifty yards, from any part of any carriageway or cartway, unless such pit or shaft or steam-engine, gin, or other like engine or machinery, shall be within some house or other building, or behind some wall or fence sufficient to conceal or screen the same from the said carriageway or cartway, so that the same may not be dangerous to passengers, horses, or cattle;—nor it shall be lawful for any person to make or cause to be made any fire for calcining or burning of ironstone, limestone, bricks, or clay, or the making of coals, within the distance of fifteen yards from any part of the said carriageway or cartway, unless the same shall be within some house or other building, or behind some wall or fence, sufficient to screen the same from the same carriageway or cartway as aforesaid;—and in case any person shall offend in any of the cases aforesaid, every such person so offending shall forfeit and pay any sum not exceeding five pounds for each and every day such pit, shaft, windmill, steam-engine, gin, machine, or fire shall be permitted to continue contrary to the provisions of this Act, which said penalties shall be levied, recovered, and applied in such and



the same manner as any penalty or forfeiture for any other offence on any highway may be levied, recovered, and applied : provided that nothing herein contained shall be construed to restrain any person or persons from using, repairing, rebuilding, or enlarging any windmill, steam-engine, gin, or other like machine, or any kiln, or other erection used for the purpose of calcining or burning of ironstone, limestone, bricks, or clay, or the making of cokes, which may have been erected and may be in existence at the passing of this Act. *Id.* s. 70.

*Gates on railways.] Whenever a railroad shall cross a highway for carts or carriages, or turnpike road, the proprietors of the said railroad shall make and maintain good and sufficient gates at each of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railroad ; and any complaint for any neglect in respect of the said gates, shall be made within one calendar month after the said neglect, to any justice, who may summon the party so complained against to appear before him at the next petty sessions, who shall hear and decide upon the said complaint, and the proprietor so offending shall forfeit any sum not exceeding five pounds, together with such costs, as to the said justice shall seem fit (2 & 3 Vict. c. 45, s. 1) ; to be recovered and applied in like manner as penalties under stat. 5 & 6 W. 4, c. 50. *Id.* s. 45.*

*Riding on footpaths, injuring the road, making fires, &c.] If any person shall wilfully ride upon any footpath or causeway by the side of any road, made or set apart for the use or accommodation of foot passengers ;—or shall wilfully lead or drive any horse, ass, sheep, mule, swine, or cattle or carriage of any description, or any truck, or sledge, upon any such footpath or causeway ;—or shall tether any horse, ass, mule, swine, or cattle on any highway, so as to suffer or permit the tethered animal to be thereon ;—or shall cause any injury or damage to be done to the said highway, or the hedges, posts, rails, walls, or fences thereof ;—or shall wilfully obstruct the passage of any footway ;—or wilfully destroy or injure the surface of any highway ;—or shall wilfully or wantonly pull up, cut down, remove, or damage the posts, blocks, or stones fixed by the said surveyor as herein directed ; or dig or cut down the banks, which are the securities and defence of the said highways ;—or break, damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges, or otherwise injure or deface the same ;—or pull down, destroy, obliterate, or deface any milestone or post,*

graduated or direction post or stone, erected upon any highway;—or shall play at foot-ball or any other game on any part of the said highways, to the annoyance of any passenger or passengers;—or if any hawker, higgler, gipsy, or other person travelling, shall pitch any tent, booth, stall, or stand, or encamp, upon any part of any highway;—or if any person shall make or assist in making any fire, or shall wantonly fire off any gun or pistol, or shall set fire to or wantonly let off or throw any squib, rocket, serpent, or other firework, whatsoever, within fifty feet of the centre of such carriageway or cartway;—or bait, or run for the purpose of baiting, any bull upon or near any highway;—or shall lay any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever upon such highway, to the injury of such highway, or to the injury, interruption, or personal danger of any person travelling thereon;—or shall suffer any filth, dirt, lime, or other offensive matter or thing whatsoever to run or flow into or upon any highway from any house, building, erection, lands, or premises adjacent thereto;—or shall in any way wilfully obstruct the free passage of any such highway:—every person so offending in any of the cases aforesaid, shall for each and every such offence forfeit and pay any sum not exceeding forty shillings, over and above the damages occasioned thereby. 5 & 6 W. 4, c. 50, s. 72.

*Matters laid on highways.]* If any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever, shall be laid upon any highway, so as to be a nuisance, and shall not, after notice given by the surveyor, assistant surveyor, or district surveyor, be forthwith removed, it shall and may be lawful for the surveyor, assistant surveyor, or district surveyor, by order in writing from any one justice, to clear the said highway, by removing the said stone, hay, straw, dung, manure, soil, ashes, rubbish, or other matter or thing as aforesaid, and to dispose of the same, and to apply the proceeds arising therefrom towards the repairs of the highway within the parish in which such highway may be situate: provided nevertheless, that if any soil, ashes, or rubbish shall be laid on any highway, and such soil, ashes, or rubbish shall not be of sufficient value to defray the expense of removing them, the person who laid or deposited such soil, ashes, or rubbish, shall repay to the said surveyor, assistant surveyor, or district surveyor the money which he shall have necessarily expended for the removal thereof, which money, in case the same shall not be forthwith repaid, shall be levied as forfeitures are herein directed to be levied. *Id.* s. 73. This section merely enables the surveyor, if he have the order of a justice, to remove the nuisance; but

it does not authorize the justice to convict or punish the surveyor for not removing it, in pursuance of the order. *Morgan v. Leach et al.*, 12 Law J. 4, n.

*Cattle straying on highways.*] If any horse, ass, sheep, swine, or other beast or cattle of any kind, shall at any time be found wandering, straying, or lying, or being depastured, on any highway or on the sides thereof, without a keeper, (except on such parts of any road as lead or pass through or over any common or waste or uninclosed ground,)—any surveyor, or any other person authorized by him, is hereby required to seize and impound every such horse, ass, sheep, swine, or other beast or cattle, in the common pound (if any) of the parish where the same shall be found, or in such other place as the surveyor shall have provided or shall provide for that purpose, and the same there to detain, until the owner thereof shall, for every and each horse, ass, sheep, swine, or other beast or cattle so impounded, pay any sum not exceeding one shilling, together with reasonable charges and expenses (such charges to be settled by any two justices of the peace), of impounding and keeping the same, to the surveyor of the parish in which the beast so impounded shall have been found, the said sum so paid for each beast to be applied to the repair of the said highway; and in case the said penalty, charges, and expenses shall not be paid within five days after such impounding (notice being thereof first given to the owner, if known at the time), it shall and may be lawful for any two justices of the peace to order every such horse, ass, sheep, swine, or other beast or cattle to be sold, except where it shall be made to appear to such justices that the same escaped from any inclosure by any gate or fence being wilfully or negligently left open or destroyed by any person not being owner of such inclosure, nor employed by such owner, or that it arose from accident, and was not wilful, in which case justices may remit the said penalty; and the money arising from such sale, after deducting the said penalty, and charges and expenses of impounding, keeping, and selling every such horse, ass, sheep, swine, or other beast or cattle, shall be paid to the person whose property the same so sold shall appear to have been; and in case the owner thereof shall not be known, and no application shall be made for the money arising from such sale within one calendar month after such sale shall have taken place, the said money shall be applied, after deducting the said charges and expenses, in the same manner as the said penalty of one shilling is herein directed to be applied; but no owner of any horse, ass, sheep, swine, or other beast or cattle impounded as aforesaid, shall in any case pay more than the sum of twenty shillings, over and above the charges and expenses of impounding and keeping the same, for any num-

ber of horses, asses, sheep, swine, or other beast or cattle impounded at one time : also nothing in this Act shall be deemed, taken, or construed to extend to take away any right of pasturage, which may exist on the sides of any highway. *Id.* s. 74.

And in case any person shall release or attempt to release any horse, ass, sheep, swine, or other beast, or cattle, which shall be seized for the purpose of being impounded under the authority of this Act, from the pound or place where the same shall be so impounded, or in the way to or from any such pound or place, or shall pull down, damage, or destroy the same pound or place, or any part thereof, or any lock or bolt belonging thereto or with which the same shall be fastened, or shall rescue or release, or attempt to rescue or release any distress or levy which shall be made under the authority of this Act, until or before such horse, ass, sheep, swine, or other beast or cattle seized or so impounded, or such distress, or levy so made, shall be discharged by due course of law : every person so offending shall, upon conviction thereof before any two of Her Majesty's justices of the peace, forfeit and pay any sum not exceeding twenty pounds, and in default thereof be committed by such justices, by warrant under their hands and seals, to the house of correction of the county wherein the said offence shall have been committed, there to be kept to hard labour for any time not exceeding three calendar months. *Id.* s. 75.

As to impounding cattle, sheep, and swine grazing upon roads or ways set out under the General Inclosure Act, see stat. 8 & 9 Vict. c. 118, s. 100.

*Nuisances at common law.*] Any obstruction of a common highway, as by erecting a gate across it, locking a gate already erected, digging a ditch, or making a hedge across it, laying logs of timber on it, or injuring it in any way, or doing any other act by which it is rendered less commodious to the Queen's subjects,—is a public nuisance at common law, (1 *Hawk.* c. 76, ss. 144, 146), and is a misdemeanor, indictable and punishable with fine or imprisonment, or both.

*Duty of Surveyor to account, deliver up Books, &c.*

*To account, 243.*

| *To deliver up books, &c., on  
quitting office, 244.*

*To account.*] Within fourteen days after the election or appointment of surveyor, the accounts made or signed by the surveyor, district surveyor, or assistant surveyor for the year preceding, of all monies received and disbursed by virtue of

this Act, ending on the day of the election or appointment of surveyor, shall be made up, balanced and laid before the parishioners in vestry; and within one calendar month after such election or appointment, the said accounts shall be laid before the justices of the peace at a special sessions for the highways holden at the place nearest to the parish or district for which such surveyor shall have been appointed, and such justices are hereby authorized and required to examine him as to the truth of the said accounts or of any charge contained therein: provided always, that if any person, chargeable to the rate authorized to be made by this Act, has any complaint against such accounts or the application of the moneys received by the said surveyor, it shall be lawful for any such inhabitant to make his complaint thereof to such justices at the time of the verification of such accounts as aforesaid, and the said justices are hereby required to hear such complaint, and, if they shall think fit, to examine such surveyor upon oath, and to make such order thereon as to them shall seem meet. *Id.* s. 44.

At the special sessions held next after the twenty-fifth day of March, in every year, the surveyor of each of the parishes within their respective divisions shall verify his accounts, and shall make a return in writing to such special sessions of the state of the roads, common highways, bridges, causeways, hedges, ditches, and watercourses appertaining thereto, and of all nuisances and encroachments, if any, made upon the several highways within the parish for which he was surveyor, as well as the extent of the different highways which the said parish is liable to repair, what part thereof has been repaired and with what materials, at what expense, and what was the amount levied during the time he was surveyor of the said parish. *Id.* s. 45.

The surveyor at the time of passing his accounts as herein mentioned, shall deliver to the justices a statement in writing of the name and residence of the person appointed to succeed him as surveyor. *Id.* s. 10.

It may be necessary to state, that no appeal lies against the allowance of surveyors' accounts. *R. v. JJ. W. R. Yorkshire*, 10 Law J. 71, *m.* And the court refused a mandamus to the magistrates at a special sessions for the highways, commanding them to review their allowance of the surveyor's accounts, although the justices were anxious that it should be reheard, and had come to their decision under a mistaken impression that an appeal lay to the quarter sessions against it. *R. v. JJ. of the W. R. of Yorkshire*, 10 Law J. 137, *m.*; 1 Q. B. 624.

*To deliver up books, &c., on quitting office.]* The surveyor, district surveyor, or assistant surveyor shall, within fourteen

days after leaving his office, deliver such books and accounts verified as herein directed, together with all such sums of money as shall be due from him, and likewise all tools, materials, implements, and other things as aforesaid, to his successors in office, or retain the same in his hands and account for them in his next account if he shall be continued surveyor or district surveyor of such parish in the succeeding year; and in case such surveyor or district surveyor shall neglect to deliver within such time as aforesaid the said books, papers, writings, and accounts, and such tools, materials, implements, and other things, in manner aforesaid, he shall for every such offence forfeit any sum not exceeding five pounds; and in case he shall make default in the paying or accounting for the money so due from him within the time and according to the directions aforesaid, he shall forfeit double the money so due. *Id.* s. 42.

### *3. Penalties for Neglect of Duty.*

If any surveyor or district surveyor, or assistant surveyor, shall neglect his duty in any thing required of him by this Act, for which no particular penalty is imposed, he shall forfeit for every such offence any sum not exceeding five pounds. *Id.* s. 20. See *Morgan v. Leach et al.*, 12 Law J. 4, *m.*

### *Penalties, how recovered, &c.*

<p><i>Securing unknown offenders,</i> 245 <i>Summons, information, &amp;c.,</i> 245.</p>		<p><i>Witnesses, 246.</i> <i>Penalties, &amp;c., how levied,</i> 246.</p>
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*Securing unknown offenders.*] Whereas offences may be committed against this Act by persons whose names are unknown to the surveyor, assistant surveyor, or district surveyor: be it therefore enacted, that it shall be lawful for the surveyor, assistant surveyor, or district surveyor, or any person acting under his authority, and such other person witnessing the commission of the offence, without any other authority than this Act, to seize and detain such unknown person who shall commit any such offence, and take him forthwith before any justice of the peace, who shall proceed and act with respect to such offence according to the provisions of this Act. *Id.* s. 79.

*Summons, information, &c.*] Where any penalty or forfeiture is recoverable before justices of the peace under this

Act, any justice to whom complaint shall be made of any such offence, may summon the party complained against before any two justices, and on such summons the said two justices may hear and determine the matter, and on proof of the offence convict the offender, and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same, although no information in writing shall have been exhibited or taken by or before such justice. *Id.* s. 101.

*Witnesses.*] If any person, after being paid or tendered a reasonable sum of money for his costs, charges and expenses, shall be summoned as a witness to give evidence before any justices of the peace touching any matter or fact contained in any information for an offence against this Act, either on the part of the prosecutor or person accused, and shall refuse or neglect to appear at the time and place for that purpose appointed, without a reasonable excuse for his refusal or neglect, —or appearing shall (after having been paid or tendered a reasonable sum for his costs, charges, and expenses) refuse to be examined upon oath and give evidence, such person shall forfeit for every such offence, any sum not exceeding five pounds. *Id.* s. 102.

*Penalties, &c., how levied.*] All penalties and forfeitures and all balances due from a surveyor, and all other costs and charges, shall, upon proof and conviction of the offences respectively before any two or more justices, or upon order made under the authority of the Act, be levied, together with the costs, by distress and sale of the goods and chattels of the person ordered to pay the same; and if such fines, penalties, and forfeitures shall not be forthwith paid upon conviction, the justices may order the offender to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless he shall give sufficient security, by way of recognizance or otherwise, to the satisfaction of such justices for his or their appearance before them on such day as shall be appointed for the return of such warrant of distress, such day not being later than seven days from the time of taking such security, or in case it shall appear to the satisfaction of such justices, either by the confession of the offender or otherwise, that he hath not goods or chattels within the jurisdiction of such justices sufficient whereon to levy all such penalties, &c., and such justices may at their discretion, without issuing any warrant of distress, commit the offender for such period of time, and in such and like manner, as if a warrant of distress had been issued, and *nulla bona* returned thereon; but if a warrant of distress shall be issued, and upon the return thereof it shall appear that no sufficient distress can be had whereon to levy the said penalty, &c., and

the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such justices, upon the confession of the offender or otherwise, that he hath not sufficient goods and chattels whereupon such penalty, &c., could be levied if a warrant of distress were issued, such justices shall not be required to issue such warrant, but in such case such justices shall, by warrant under their hands, cause such offender or offenders to be committed to the common gaol or house of correction of the county, riding, or place where the offender shall be or reside, there to be kept to hard labour, for any term not exceeding three calendar months, unless such penalties, &c., shall be sooner paid and satisfied; the penalties and forfeitures shall be paid, the one half to the informer, and the other half to the surveyor of the parish where such offence shall happen, to be applied towards the repair of the highways thereof, unless otherwise directed by this Act; but in case the surveyor shall be the informer, then the whole shall be applied towards the repair of such highway. *Id.* s. 108.

Where, upon an appeal against a certificate of justices for stopping up a highway, the sessions award costs, the not paying those costs is not an offence within the meaning of this section, so as to authorize two justices to convict the party. *Selwood v. Mount et al.*, 10 Law J. 121, *m.*



## LOCAL AUTHORITIES

### *For the Removal of Nuisances.*

1. *The Local Authority*, p. 248.
2. *Nuisances*, p. 252.
3. *Proceedings to abate them*, p. 256.

The stat. 18 & 19 Vict. c. 121 (the short title of which is "The Nuisances Removal Act for England, 1855"), repeals the Nuisances Removal and Diseases Prevention Acts of 1848 and 1849, and substitutes for them the following provisions. The Act does not affect the jurisdiction of the commissioners of sewers, or the navigation of rivers or canals, or the rights of mill owners in respect of the supply or fall of water, &c., nor does it extend to mines, &c.

### 1. THE LOCAL AUTHORITY.

<i>Local authority</i> , 248.	<i>Sanitary inspector</i> , 250.
<i>How, in extra-parochial places</i> , 249.	<i>Expenses how defrayed</i> , 250.

*Local authority.*] The following bodies shall respectively be the local authority to execute this Act in the districts hereunder stated in England :

In any place within which the Public Health Act is or shall be in force, the local board of board :

In any other place wherein a council exists or shall exist, the mayor, aldermen, and burgesses by the council, except in the city of London and the liberties thereof, where the local authority shall be the commissioners of sewers for the time being ; and except in the city of Oxford and borough of Cambridge, where the local authority shall be the commissioners acting in the execution of the local improvement Acts in force respectively in the said city and borough :

In any place in which there is no local board of health or council, and where there are or shall be trustees or commissioners under an improvement Act, such trustees or commissioners :

In any place within which there is no such local board of health nor council, body of trustees, or commissioners, and where there is or shall be a board for the repair of the highways of such place, that board :

In any place where there is no such local board of health,

council, body of trustees, or commissioners, nor highway board, a committee for carrying this Act into execution, by the name of "The Nuisances Removal Committee," of which the surveyor or surveyors of highways for the time being of such place shall be *ex officio* a member or members, may be annually chosen by the vestry on the same day as the overseers or surveyors of highways, and the first of such committees may be chosen at a vestry to be specially held for that purpose; and such committee may consist of such number of members as the vestry shall determine, not being more than twelve, exclusive of such surveyor or surveyors, and of such committee three shall be a quorum :

In any place wherein there is no such local board of health, council, body of trustees or commissioners, highway board or committee appointed as aforesaid, and wherein there is or shall be a board of inspectors for lighting and watching under the Act 3 & 4 W. 4, c. 90, that board with the surveyor of highways :

In any place in which there is no such local board of health, council, body of trustees, or commissioners, nor highway board, nor committee appointed as aforesaid, nor board of inspectors for lighting and watching, the guardians and overseers of the poor and the surveyors of the highways in and for such place. 18 & 19 Vict. c. 121, s. 3.

And on any vacancy in such nuisances removal committee arising from death, change of residence or otherwise, notice shall be given by the committee to the churchwardens, who shall forthwith summon a meeting of the vestry, and fill up such vacancy by election; and until such vacancy is filled up the remaining members of the committee may act in all respects as if their number was complete. *Id.* s. 4.

The local authority may appoint any committee of their own body to receive notices, take proceedings, and in all or certain specified respects execute this Act, whereof two shall be a quorum; and such local authority, or their committee may, in each particular case, by order in writing under the hand of the chairman of such body or committee, empower any officer or person to make complaints and take proceedings on their behalf. *Id.* s. 5.

*How, in extra-parochial places.]* In extra-parochial places not comprised within the jurisdiction of any of the local authorities aforesaid, and having a population of not less than two hundred persons, the local authority for the execution of this Act shall be a nuisances removal committee, elected annually by the householders within the extra-parochial place :

The first election of such committee shall take place at a

meeting of such householders summoned for that purpose by the churchwardens of the adjacent place having the largest common boundary with such extra-parochial place; and

Subsequent elections shall be held annually on some day in Easter week at meetings summoned by the chairman of the local authority for the year preceding :

Extra-parochial places not so comprised as aforesaid, and having a population of less than two hundred persons, shall for the purpose of this Act be attached to and form part of the adjacent place having the largest common boundary with the extra-parochial place, and notice of vestry meetings for the election of a local authority under and for the purposes of this Act shall be given in such extra-parochial places, and the householders within such places may attend such vestry meetings, and vote on such elections. *Id.* s. 6.

*Sanitary inspector.*] The local authority shall, for the purposes of this Act, appoint or employ, or join with other local authorities in appointing or employing, a sanitary inspector or inspectors, and may appoint a convenient place for his or their office, and may allow to every such person on account of his employment a proper salary or allowance; and where local authorities join in such appointment or employment they may apportion among themselves the payment of such salary or allowance: Provided always, that where the local authority has already appointed an officer who executes the duties of such inspector under any improvement Act, it shall not be necessary to appoint any other inspector under this Act, but the inspector acting in execution of the improvement Act shall have all the powers, authorities, and privileges granted to any inspector appointed under this Act. *Id.* s. 9.

*Expenses how defrayed.*] All charges and expenses incurred by the local authority in executing this Act, and not recovered, as by this Act provided, may be defrayed as follows; to wit,

Out of general district rates, where the local authority is a local board of health :

Out of the borough fund or borough rate, where the local authority is the mayor, aldermen, and burgesses by the council, or if there be an improvement Act for the borough administered by the council, then out of rates levied thereunder applicable to the purposes of such improvement Act; or in the city of London and the liberties thereof, any rates or funds administered by the commissioners of sewers for the said city and liberties :

Provided always, that in the city of Oxford and borough of

Cambridge such expenses shall be deemed annual charges and expenses of cleansing the streets of the said city and borough respectively, and shall be so payable :

Out of the rates levied for purposes of improvement under any improvement Act, where the local authority is a body of trustees or commissioners acting in execution of the powers of such an Act :

Out of highway rates, or any fund applicable in aid or in lieu thereof, where the local authority is a highway board, or a nuisances removal committee :

Out of the rates for lighting and watching, where the local authority is a board of inspectors appointed for lighting and watching :

And if there be no such rates or funds, or if the local authority be the guardians and surveyors of highways, then out of the rates or funds applicable to the relief of the poor of the parish or place wherein such rates or funds are collected or arise, if such parish or place be co-extensive with the district within which the charges and expenses are incurred, but if such parish or place be now or hereafter shall be partly comprised within and partly without the limits of a place where a local authority, other than a highway board, nuisance removal committee, inspectors of watching and lighting, and surveyors or guardians and surveyors, exist or shall exist, all the charges and expenses incurred in the district comprising that part of the parish or place which is excluded from such limits shall be defrayed out of any highway rate or rates, or any funds applicable in lieu thereof, collected or raised within the part so excluded ; and if there be more than one highway rate collected within such district, the local authority shall settle the proportion in which the respective parties or places liable thereto shall bear such charges and expenses ; and if any portion of such excluded part be exempt from such highway rate or rates, then all the charges and expenses incurred in the whole of such excluded part shall be defrayed out of any district police rate or other rate which may by the Act 12 & 13 Vict. c. 65, be raised and assessed upon such excluded part :

And when the local authority has not control of such rates or funds, the officer or person having the custody or control thereof shall pay over the amount to the local authority, on the order of two justices, directed to such officer or person ; and on neglect or refusal to pay the sum specified in such order for six days after the service thereof, the same may, by warrant under the hands of the same or any two justices, be levied by distress and sale of the goods and chattels of the officer or person in

default, and such levy shall include the costs of such distress and sale :

In extra-parochial places having a population of not less than two hundred persons, out of a rate assessed by the local authority on all such property in the place as would be assessable to highway rate if such rate were levied therein :

In extra-parochial places having a population of less than two hundred persons, out of a similar rate assessed by the surveyor of highways of the adjacent place having the largest common boundary with such extra-parochial place :

And the local authority in the first case, and the surveyor of highways in the second, may levy and collect the sums so assessed, in the same manner, and with the same remedies in case of any default in payment thereof, and with the same right of appeal against the amount of such assessment reserved to the person assessed, as are provided by the law in force for the time being with regard to rates for the repair of highways. *Id.* s. 7.

## 2. NUISANCES.

*What*, 252.

*Open ditches, &c.*, 253.

*Water corrupted by gas washings*, 254.

*Unwholesome provisions*, 254.

*Noxious trades, &c.*, 255.

*Overcrowded houses*, 256.

*What.*] The word "nuisances" under this Act shall include—

Any premises in such a state as to be a nuisance or injurious to health :

Any pool, ditch, gutter, watercourse, privy, urinal, cess-pool, drain, or ashpit so foul as to be a nuisance or injurious to health :

Any animal so kept as to be a nuisance or injurious to health :

Any accumulation or deposit which is a nuisance or injurious to health.

Provided always, that no such accumulation or deposit as shall be necessary for the effectual carrying on of any business or manufacture shall be punishable as a nuisance under this section, when it is proved to the satisfaction of the justices that the accumulation or deposit has not been kept longer than is necessary for the purposes of such business or manufacture, and that the best available means have been taken for protecting the public from injury to health thereby. *Id.* s. 8.

*Open ditches, &c.*] Surveyors and district surveyors may make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses in and through any lands or grounds adjoining or lying near to any highway, upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall thereby sustain, to be settled and paid in such manner as the damages for getting materials in inclosed lands or grounds are directed to be settled and paid by the law in force for the time being with regard to highways. *Id.* s. 21.

And whenever any ditch, gutter, drain, or watercourse used or partly used for the conveyance of any water, filth, sewage, or other matter from any house, buildings or premises is a nuisance within the meaning of this Act, and cannot, in the opinion of the local authority, be rendered innocuous, without the laying down of a sewer or of some other structure along the same or part thereof or instead thereof, such local authority shall and they are hereby required to lay down such sewer or other structure, and to keep the same in good and serviceable repair, and they are hereby declared to have the same powers as to entering lands for the purposes thereof, and to be entitled to recover the same penalties in case of interference, as are contained in the sixty-seventh and sixty-eighth sections of the Act passed in the fifth and sixth years of the reign of King William the Fourth, intituled "An Act for consolidating and amending the Laws relating to Highways in England;" and such local authority are hereby authorized and empowered to assess every house, building, or premises then or at any time thereafter using for the purposes aforesaid the said ditch, gutter, drain, watercourse, sewer, or other structure, to such payment either immediate or annual, or distributed over a term of years, as they shall think just and reasonable, and, after fourteen days notice at the least left on the premises so assessed, to levy and collect the sum and sums so assessed in the same manner, and with the same remedies in case of default in payment thereof, as highway rates are by the law in force for the time being leviable and collectable, and with the same right and power of appeal against the amount of such assessment reserved to the person or persons so assessed as by the law for the time being in force shall be given against any rate made for the repair of the highways; and the provisions contained in this section shall be deemed to be part of the law relating to highways in England: Provided always, that where such ditch, gutter, drain, or watercourse shall, as to parts thereof, be within the jurisdiction of different local authorities, this enactment shall apply to each local authority only as to so much of the works hereby required, and the expenses thereof, as is included within the respective jurisdiction of that authority: Provided also,

that such assessment shall in no case exceed a shilling in the pound on the assessment to the highway rate, if any. *Id.* s. 22.

*Water corrupted by gas washings.*] Any person or company engaged in the manufacture of gas who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond or place for water shall be fouled, shall forfeit for every such offence the sum of two hundred pounds. *Id.* s. 23.

Such penalty may be recovered, with full costs of suit, in any of the superior courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid, or if there be no such person, or in default of proceedings, by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the local authority; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased. *Id.* s. 24.

In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not), the person or company so offending shall forfeit the sum of twenty pounds (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or during which the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on such person or company by the local authority, or the person into whose water such washing or other substance shall be brought or flow or whose water shall be fouled thereby, and such penalty shall be paid to the parties from whom such notice shall proceed; and all monies recovered by a local authority under this or the preceding section shall, after payment of any damage caused by the act for which the penalty is imposed, be applied towards defraying the expenses of executing this Act. *Id.* s. 25.

*Unwholesome provisions.*] The sanitary inspector may at all reasonable times inspect and examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour exposed for sale, or in the course of or on their way to slaughtering, dressing, or preparation for sale or use, or landed from any ship or vessel in any port in England; and in case any such carcase, meat, poultry, game, flesh, fish, fruit, vegetables,

corn, bread, or flour appear to him to be unfit for such food the same may be seized; and if it appear to a justice that any such carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour is unfit for the food of man, he shall order the same to be destroyed, or to be so disposed of as to prevent its being exposed for sale or used for such food; and the person to whom such carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour belongs, or in whose custody the same is found, shall be liable to a penalty not exceeding ten pounds for every carcase, fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour so found. *Id.* s. 26.

*Noxious trades, &c.]* If any candle house, melting house, melting place, or soaphouse, or any slaughter house, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place used for any trade, business, process, or manufacture causing effluvia, be at any time certified to the local authority by any medical officer, or any two legally qualified medical practitioners, to be a nuisance or injurious to the health of the inhabitants of the neighbourhood, the local authority shall direct complaint to be made before any justice, who may summon before any two justices in petty sessions assembled at their usual place of meeting the person by or in whose behalf the work so complained of is carried on, and such justices shall inquire into such complaint, and if it shall appear to such justices that the trade or business carried on by the person complained against is a nuisance, or causes any effluvia injurious to the health of the inhabitants of the neighbourhood, and that such person shall not have used the best practicable means for abating such nuisance or preventing or counteracting such effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier), shall, upon a summary conviction for such offence, forfeit and pay a sum of not more than five pounds nor less than forty shillings, and upon a second conviction for such offence the sum of ten pounds, and for each subsequent conviction a sum double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of two hundred pounds: Provided always, that the justices may suspend their final determination in any such case upon condition that the person so complained against shall undertake to adopt, within a reasonable time, such means as the said justices shall judge to be practicable and ordered to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or shall give



notice of appeal in the manner provided by this Act, and shall enter into recognizances to try such appeal, and shall appeal accordingly: Provided always, that the provisions hereinbefore contained shall not extend or be applicable to any place without the limits of any city, town, or populous district. *Id.* s. 27.

Provided that if upon his appearance before such justices, the party complained against object to have the matter determined by such justices, and enter into recognizances, with sufficient sureties, to be approved by the justices, to abide the event of any proceedings at law or in equity that may be had against him on account of the subject matter of complaint, the local authority shall thereupon abandon all proceedings before the justices, and shall forthwith take proceedings at law or in equity in Her Majesty's superior courts for preventing or abating the nuisance complained of. *Id.* s. 28.

*Overcrowded houses.*] Whenever the medical officer of health, if there be one, or if none, whenever two qualified medical practitioners, shall certify to the local authority that any house is so overcrowded as to be dangerous or prejudicial to the health of the inhabitants, and the inhabitants shall consist of more than one family, the local authority shall cause proceedings to be taken before the justices to abate such overcrowding, and the justices shall thereupon make such order as they may think fit, and the person permitting such overcrowding shall forfeit a sum not exceeding forty shillings. *Id.* s. 29.

### 3. PROCEEDINGS TO ABATE THEM.

*Notice of nuisance,* 256.

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*Notice of nuisance.*] Notice of nuisance may be given to the local authority by any person aggrieved thereby, or by any of the following persons; the sanitary inspector or any paid officer under the said local authority; two or more inhabitant householders of the parish or place to which the notice relates; the relieving officer of the union or parish; any constable or any officer of the constabulary or police force of the district or place; and in case the premises be a common lodging house, any person appointed for the inspection of common lodging houses; and the local authority may take cognizance

of any such nuisance after entry made as hereinafter provided, or in conformity with any improvement Act under which the inspector has been appointed. *Id.* s. 10.

FORM (B).

*Notice of Nuisance.*

*To the local authority [describing it].*

*I [or we], the person aggrieved by the nuisance hereinafter described [or the undersigned and described inhabitant householders, sanitary inspector, or other officer (describing him)] do hereby give you notice, that there exists in or upon the [dwelling house, yard, &c., as the case may be], situate at — [giving such description as may be sufficient to identify the premises], in the parish of —, in your district, under the Nuisances Removal Act, 1855, the following nuisance, videlicet, [describing the nuisance, as the case may be; for instance, a dwelling house or building a nuisance or injurious to health for want of a privy or drain or sufficient means of ventilation, or so dilapidated or so filthy as to be a nuisance or injurious to health, or, for further instance, a ditch or drain so foul as to be a nuisance or injurious to health, or an accumulation of —, a nuisance or injurious to health, &c., or swine so kept as to be a nuisance or injurious to health]; and that such a nuisance is caused by [naming the person by whose act or default the nuisance is caused, or by some person unknown].*

*Dated this — day of —, in the year of our Lord One thousand eight hundred and —.*

[Signed by complainant under Section 10.]

*Entry to view.]* The local authority shall have power of entry for the following purposes of this Act, and under the following conditions:—

1. To ground proceedings.

For this purpose, when they or any of their officers have reasonable grounds for believing that a nuisance exists on any private premises, demand may be made by them or their officer, on any person having custody of the premises, of admission to inspect the same, at any hour between nine in the morning and six in the evening; and if admission be not granted, any justice having jurisdiction in the place may, on oath made before him of belief in the existence of the nuisance, and after reasonable notice of the intended application to such

justice being given in writing to the party on whose premises the nuisance is believed to exist, by order under his hand require the person having the custody of the premises to admit the local authority of their officer; and if no person having custody of the premises can be discovered, any such justice may and shall, on oath made before him of belief in the existence of such nuisance, and of the fact that no person having custody of the premises can be discovered, by order under his hand authorize the local authority or their officers to enter the premises between the hours aforesaid.

2. To examine premises where nuisances exist, to ascertain the course of drains, and to execute or inspect works ordered by justices to be done under this Act.

For these purposes, whenever, under the provisions of this Act, a nuisance has been ascertained to exist, or when an order of abatement or prohibition under this Act has been made, or when it becomes necessary to ascertain the course of a drain, the local authority may enter on the premises, by themselves or their officers, between the hours aforesaid, until the nuisance shall have been abated, or the course of the drain shall have been ascertained, or the works ordered to be done shall have been completed, as the case may be.

3. To remove or abate a nuisance in case of noncompliance with or infringement of the order of justices, or to inspect or examine any carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour, under the powers and for the purposes of this Act.

For this purpose the local authority or their officer may from time to time enter the premises where the nuisance exists, or the carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread or flour is found, at all reasonable hours, or at all hours during which business is carried on on such premises, without notice. *Id.* s. 11.

#### FORM (C).

##### *Notice to Owner or Occupier of Entry for Examination.*

*To the owner [or occupier, as the case may be,] of [describe the premises situate at] [insert a description sufficient to identify the premises].*

*Take notice, That under the Nuisances Removal Act for England, 1855, the [local authority, naming it,] in whose district under the said Act the above premises are situate,*

*have received a notice from [name complainant], stating that in or upon the said premises [insert the cause of nuisance as set forth in the notice].*

*And further take notice, That after the expiration of twenty-four hours from the service of this notice the [local authority] will cause the said premises to be entered and examined under the provisions of the said Act, and if the cause of nuisance aforesaid be found still existing, or, though removed or discontinued, be likely to be repeated, a summons will be issued requiring your attendance to answer a complaint which will be made to the justices for enforcing the removal of the same, and prohibiting a repetition thereof, and for recovering the costs and penalties that may be incurred thereby.*

*Dated this — day of —, in the year of our Lord  
One thousand eight hundred and —.*

*A.B.*

*The officer appointed by the [local authority] to take proceedings under the Nuisances Removal Act for England, 1855.*

**FORM (D).**

**Summons.**

*To the owner or occupier of [describe premises] situate at [insert such a description as may be sufficient to identify the premises], or to A. B. of —.*

*County of —, [or } You are required to appear before  
borough of —, &c., } two of Her Majesty's justices of  
or district of —, } the peace [or one of the magis-  
or as the case may } trates of the police courts of the  
be,] to wit. } metropolis, or the stipendiary  
magistrate] of the county [or other jurisdiction] of —, at  
the petty sessions [or court] holden at —, on the —  
day of — next, at the hour of — in the — noon, to  
answer the complaint this day made to me by — [or by  
— on behalf of] [naming the local authority, as the case  
may be], that in or upon the premises above mentioned [or  
in or upon certain premises situate at No. — in the —  
— street in the parish of —, or such other description  
or reference as may be sufficient to identify the premises], in  
their district, under the Nuisances Removal Act for  
England, 1855, the following nuisance exists [describing  
it, as the case may be], and that the said nuisance is caused  
by the act or default of the occupier [or owner] of the said*

*premises, or by you A.B. [or in case the nuisance be discontinued, but likely to be repeated, say, there existed recently, to wit on or about the — day of —, on the premises, the following nuisance [describe the nuisance], and that the said nuisance was caused [&c.], and although the same has since the said last-mentioned day been removed or discontinued, there is reasonable ground to consider that the same or the like nuisance is likely to recur on the said premises].*

*Given under the hand of me, J.P., esquire, one of her Majesty's justices of the peace acting in and for the [jurisdiction] stated in the margin, or one of the magistrates of the police courts of the metropolis, or stipendiary magistrate of —, — day of — in the year of our Lord One thousand eight hundred and —.*

#### FORM (A.)

#### *Order of Justices for Admission of Officer of Local Authority to inspect private Premises.*

*Whereas [describe the local authority] have by their officer [naming him] made application to me, A.B., one of Her Majesty's justices of the peace having jurisdiction in and for [describe the place], and the said officer has made oath to me of his belief that a nuisance, within the meaning of the Nuisances Removal Act for England, 1855, viz. [describe nuisance], exists on private premises at [describe situation of premises so as to identify them], within my jurisdiction, and demand of admission to such premises for the inspection thereof has been duly made under the said Act and refused.*

*Now, therefore, I the said A.B. do hereby require you to admit the said [name the local authority], or [the officer of the said (local authority)], for the purpose of inspecting the said premises.*

*Dated this — day of —, 18—.*

*A.B.*

*Complaint, summons, and order.] In any case where a nuisance is so ascertained by the local authority to exist, or where the nuisance in their opinion did exist at the time when the notice was given, and although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated on the same premises or any part thereof, they shall cause complaint thereof to be made before a justice of the peace; and such justice shall thereupon issue a summons requiring the person by whose act, default, permission, or sufferance the nuisance arises or continues, or if*

such person cannot be found or ascertained, the owner or occupier of the premises on which the nuisance arises, to appear before any two justices, in petty sessions assembled at their usual place of meeting, who shall proceed to inquire into the said complaint; and if it be proved to their satisfaction that the nuisance exists, or did exist at the time when the notice was given, or, if removed, or discontinued since the notice was given, that it is likely to recur or to be repeated, the justices shall make an order in writing under their hands and seals on such person, owner, or occupier for the abatement or discontinuance and prohibition of the nuisance as hereinafter mentioned, and shall also make an order for the payment of all costs incurred up to the time of hearing or making the order for abatement or discontinuance or prohibition of the nuisance. *Id.* s. 12.

By their order the justices may require the person on whom it is made to provide sufficient privy accommodation, means of drainage or ventilation, or to make safe and habitable, or to pave, cleanse, whitewash, disinfect, or purify the premises which are a nuisance or injurious to health, or such part thereof as the justices may direct in their order, or to drain, empty, cleanse, fill up, amend, or remove the injurious pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit which is a nuisance or injurious to health, or to provide a substitute for that complained of, or to carry away the accumulation or deposit which is a nuisance or injurious to health, or to provide for the cleanly and wholesome keeping of the animal kept so as to be a nuisance or injurious to health, or if it be proved to the justices to be impossible so to provide, then to remove the animal, or any or all of these things (according to the nature of the nuisance), or to do such other works or acts as are necessary to abate the nuisance complained of, in such manner and within such time as in such order shall be specified; and if the justices are of opinion that such or the like nuisance is likely to recur, the justices may further prohibit the recurrence of it, and direct the works necessary to prevent such recurrence, as the case may in the judgment of such justices require; and if the nuisance proved to exist be such as to render a house or building, in the judgment of the justices, unfit for human habitation, they may prohibit the using thereof for that purpose until it is rendered fit for that purpose in the judgment of the justices, and on their being satisfied that it has been rendered fit for such purpose they may determine their previous order by another declaring such house habitable, from the date of which other order such house may be let or inhabited. *Id.* s. 13.

And any person not obeying the said order for abatement shall, if he fail to satisfy the justices that he has used all due diligence to carry out such order, be liable for every such

offence to a penalty of not more than ten shillings per day during his default; and any person knowingly and wilfully acting contrary to the said order of prohibition shall be liable for every such offence to a penalty not exceeding twenty shillings per day during such contrary action; and the local authority may, under the powers of entry given by this Act, enter the premises to which the order relates, and remove or abate the nuisance condemned or prohibited, and do whatever may be necessary in execution of such order, and charge the cost to the person on whom the order is made as hereinafter provided. *Id.* s. 14.

### FORM (E).

#### *Order of Justices for Removal of Nuisances by Owner, &c.*

*To the owner [or occupier] of [describe the premises] situate [give such description as may be sufficient to identify the premises], or to A. B. of —, or to [giving name of the local authority], or to their servants or agents, and to all whom it may concern.*

*County of — [or] Whereas on the — day of — borough, &c. of —, complaint was made before —, or district of —, or } esquire, one of Her Majesty's justices of the peace acting in and for the county [or other jurisdiction] stated in the margin, [or before the undersigned, one of the magistrates of the police courts of the metropolis, or as the case may be], by [or by — on behalf of] [the local authority, naming it, as the case may be], that in or upon certain premises situate at —, in the district under the Nuisances Removal Act for England, 1855, of the complainants above-named, the following nuisance then existed [describing it]; and that the said nuisance was caused by the act or default of the owner [or occupier] of the said premises [or was caused by A. B.]. (If the nuisance have been removed, say the following nuisance existed on or about [the day the nuisance was ascertained to exist], and that the said nuisance was caused, &c., and although the same is now removed, the same or the like nuisance is likely to recur on the same premises).*

*And whereas —, the owner [or occupier] within the meaning of the said Nuisances Removal Act, 1855, [or the said A. B.] hath this day appeared before us justices, being two of Her Majesty's justices in and for —, sitting in petty sessions, at their usual place of meeting [or before me, the said magistrate of the police courts of the metropolis, or as the case may be], to answer the matter of the said complaint [or in case the party charged do not appear, say, And whereas it hath been this day proved to our [or my] satisfaction that*

*a true copy of a summons requiring the owner [or occupier] of the said premises [or the said A.B.] to appear this day before us [or me] —, hath been duly served according to the said Act :*

*Now upon proof here had before us [or me] that the nuisance so complained of doth exist on the said premises, and that the same is caused by the act or default of the owner [or occupier] of the said premises [or by the said A.B.] we [or I] in pursuance of the said Act, do order the said owner [or occupier, or A.B.] within [specify the time] from the service of this order or a true copy thereof according to the said Act [here specify the works to be done, as for instance, to cleanse, whitewash, purify, and disinfect the said dwelling-house; or, for further instance, to construct a privy or drain, &c.; or for further instance, to cleanse or to cover or to fill up the said cesspool, &c.], so that the same shall no longer be a nuisance or injurious to health as aforesaid.*

#### FORM (G).

##### *Order to permit Execution of Works by Owners.*

County of — [or  
borough of —, or  
metropolitan police  
district, or as the case  
may be,] to wit. } Whereas complaint hath been made  
to me, E.F., esquire, one of Her  
Majesty's justices of the peace in  
and for the county [or borough,  
&c.] of — [or one of the magis-  
trates of the police courts of the metropolis, or as the case  
may be, or one of Her Majesty's justices of the peace, as the  
case may be, of the county of —], by A.B., owner within  
the meaning of the "Nuisances Removal Act for England,  
1855," of certain premises, to wit, a dwelling house [or  
building, or as the case may be], situate at [insert such a  
description of the premises as may be sufficient to identify  
them], in the parish of — in the said county [or borough,  
&c.], that C.D., the occupier of the said premises, doth pre-  
vent the said A.B. from obeying and carrying into effect the  
provisions of the said Act, in this, to wit, that he the said C.D.  
[here describe the Act of prevention generally according to the  
circumstances; for instance thus, doth refuse to quit the said  
house, the same having by the order of the justices been de-  
clared unfit for human habitation, or doth prevent the said  
A.B. from cleansing or whitewashing, or purifying the said  
dwelling house, or erecting a privy or drain, or breaking an  
aperture for ventilation, or cleansing a drain, ditch, gutter,  
watercourse, privy, urinal, cesspool, or ashpit which is a  
nuisance or injurious to health]. And whereas the said C.D.  
has been summoned to answer the said complaint, and has  
not shown sufficient cause against the same, and it appears



*to me that [describe the act or works to be done] is necessary for the purpose of enabling the said A.B. to obey and carry into effect the provisions of the said Act, I do hereby order that the said C.D. do permit the said A.B. [describe the act or works to be done] in the manner required by the said Act.*

*Given under my hand and seal, this — day of —  
in the year of our Lord One thousand eight hundred  
and —.*

*E. F. (L.S.)*

*How, if party complained of cannot be found.] Whenever it appears to the satisfaction of the justices that the person by whose act or default the nuisance arises, or the owner or occupier of the premises is not known or cannot be found, then such order may be addressed to and executed by such local authority, and the cost defrayed out of the rates or funds applicable to the execution of this Act. Id. s. 17.*

*And any matter or thing removed by the local authority in pursuance of this enactment may be sold by public auction, after not less than five days notice by posting bills distributed in the locality, unless in cases where the delay would be prejudicial to health, when the justices may direct the immediate removal, destruction, or sale of the matter or thing; and the money arising from the sale retained by the local authority and applied in payment of all expenses incurred under this Act with reference to such nuisance, and the surplus, if any, shall be paid, on demand, by the local authority, to the owner of such matter or thing. Id. s. 18.*

#### **FORM (F).**

#### ***Order of Justices for Removal of Nuisance by Local Authority.***

*To the town council, &c., as the case may be.*

*County, &c. } Whereas [recite complaint of nuisance as in last  
to wit. } form].*

*And whereas it hath been now proved to our [or my] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person causing the nuisance, is known or can be found [as the case may be]: Now we [or I], in pursuance of the said Act, do order the said [local authority, naming it,] forthwith to [here specify the works to be done].*

*Given, &c.*

*The proceedings.*] The local authority may, within the area of their jurisdiction, direct any proceedings to be taken at law or in equity in cases coming within the purview of this Act, and may order proceedings to be taken for the recovery of any penalties, and for the punishment of any persons offending against the provisions of this Act, or in relation to appeals under this Act, and may order the expenses of all such proceedings to be paid out of the rates or funds administered by them under this Act. *Id.* s. 30. In case of any demand or complaint under this Act to which two or more persons, being owners or occupiers of premises, or partly the one or partly the other, may be answerable jointly or in common or severally, it shall be sufficient to proceed against any one or more of them without proceeding against the others or other of them; but nothing herein contained shall prevent the parties so proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law. *Id.* s. 34. And whenever, in any proceeding under this Act, whether written or otherwise, it shall become necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description. *Id.* s. 35. But where proceedings under this Act are to be taken against several persons in respect of one nuisance caused by the joint act or default of such persons, it shall be lawful for the local authority to include such persons in one complaint, and for the justices to include such persons in one summons, and any order made in such a case may be made upon all or any number of the persons included in the summons, and the costs may be distributed as to the justices may appear fair and reasonable. *Id.* s. 33.

Notices, summonses, and orders under this Act may be served by delivering the same to or at the residence of the persons to whom they are respectively addressed, and where addressed to the owner or occupier of premises they may also be served by delivering the same or a true copy thereof to some person upon the premises, or if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of the premises, or if the person shall reside at a distance of more than five miles from the office of the inspector then by a registered letter through the post. *Id.* s. 31. And copies of any orders or resolutions of the local authority or their committee, purporting to be signed by the chairman of such body or committee, shall, unless the contrary be shown, be received as evidence thereof, without proof of their meeting, or of the official character or signature of the person signing the same. *Id.* s. 32.

And no order, nor any other proceeding, matter, or thing done or transacted in or relating to the execution of this Act,

shall be vacated, quashed, or set aside for want of form, nor shall any order, nor any other proceeding, matter, or thing done or transacted in relation to the execution of this Act, be removed or removable by *certiorari*, or by any other writ or process whatsoever, into any of the superior courts; and proceedings under this Act against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included. *Id.* s. 39.

*Penalties.*] Whoever refuses to obey an order of justices under this Act for admission on premises of the local authority or their officers, or wilfully obstructs any person acting under the authority or employed in the execution of this Act, shall be liable for every such offence to a penalty not exceeding five pounds *Id.* s. 36.

If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice to whom application is made in this behalf shall by order in writing require such occupier to desist from such prevention, or to permit the execution of the works required to be executed, provided that such works appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the service of such order the occupier against whom it is made do not comply therewith, he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such non-compliance. *Id.* s. 37.

Penalties imposed by this Act for offences committed and sums of money ordered to be paid under this Act may be recovered by persons thereto competent in England according to the provisions of the Act of the eleventh and twelfth years of the present reign, chapter forty-three; and all penalties recovered by the local authority under this Act shall be paid to them, to be by them applied in aid of their expenses under this Act. *Id.* s. 38.

FORM (H).

*Summons for Nonpayment of Costs, Expenses, or Penalties.*  
Sec. 20.

To —, [describe the person from whom the costs, expenses, and penalties are due].

County of —, or } You are required to appear before two  
borough of —, } of Her Majesty's justices of the  
or district of —, } peace, [or one of the magistrates of  
to wit. } the police courts of the metropolis, or  
the stipendiary magistrates] of the county [or other juris-  
diction] of —, at the petty sessions [or court] holden at  
— on the — day of — next, at the hour of — in  
the — noon, to answer the complaint this day made to me  
by —, [or by —, on behalf of] [naming the local autho-  
rity], that the sum of — pounds, being costs and expenses  
incurred by you under and in relation to a certain complaint  
touching [describe the nuisance], and an order of [describe  
the person making the order], duly made in pursuance of the  
Nuisances Removal Act for England, 1855, [if penalties are  
due, add, and also the sum of —, being the amount of  
penalties payable by you for disobedience of the said order,]  
remains unpaid and due from you.

Given under the hand of me, J. P., esquire, one of Her Ma-  
jesty's justices of the peace acting in and for the [juris-  
diction stated in the margin], [or one of the magistrates  
of the police courts of the metropolis, or stipendiary  
magistrate of —,] the — day of —, in the year  
of our Lord One thousand eight hundred and —.

FORM (I).

*Order for Payment of Costs, Expenses, and Penalties.*  
Sec. 20.

To —, [name the person on whom the order is made].

County, &c. } Whereas complaint has been made before us  
to wit. } [or me] for that [recite cause of complaint].

And whereas the said [naming the person against whom  
the complaint is made] has this day appeared before us the  
said justices [or before me the said magistrate of the police  
courts of the metropolis, or as the case may be,] to answer  
this matter of the said complaint: [Or, in case the party  
charged do not appear, say],

*And whereas it has been this day satisfactorily proved to us [or me] that a true copy of the summons requiring the said [naming person charged] to appear before us [or me] this day hath been duly served according to the said Act: Now, having heard the matter of the said complaint, we [or I] do adjudge the said [naming the person charged] to pay forthwith [or by instalments of —, payable respectively on or before the —] to the said [naming the person or local authority to whom the costs adjudged are payable], the sum of —, for costs in this behalf, and to [naming the person or authority to whom the expenses are payable] the sum of —, for expenses in this behalf, [if penalties are due, add, and the sum of —, for penalties incurred in relation to the premises,] together with the sum of —, being the charges attending the application for this order and proceedings thereon: and if the said several sums, amounting in the whole to —, [or if any one of the said instalments,] be not paid within fourteen days after the same is due as aforesaid, we [or I] hereby order that the same be levied by distress and sale of the goods and chattels of the said —, and in default of sufficient distress in that behalf adjudge the said — to be imprisoned in the common gaol [or house of correction, as the case may be,] at —, in the said county, [or as the case may be,] for the space of such time, not exceeding three calendar months, as the justices may think fit, unless the said several sums [or sum], and all costs and charges of the said distress [and of the commitment and carrying of the said — to the said house of correction or common gaol, or as the case may be,] shall be sooner paid.*

*Given under our [or my] hands, this — day of —, in the year of our Lord One thousand eight hundred and —, at —, in the [county, or as the case may be,] aforesaid.*

#### FORM (K).

#### *Warrant of Distress. Sec. 20.*

*To the constable of —, and to all other peace officers in the said county [or as the case may be].*

*Whereas on — last past complaint was made before the undersigned, two of Her Majesty's justices of the peace in and for the said county of [or as the case may be] [or a magistrate of the police courts of the metropolis, or stipendiary magistrate, as the case may be] for that [&c., as in the order]; and thereupon having considered the matter of*

*the said complaint, we [or I] adjudged the said — [set out from Form I. the adjudication of payment, and the order for distress and for imprisonment in default of distress]: and whereas the time in and by the said order appointed for the payment of the said several sums of — and — hath elapsed, but the said — hath not paid the same or any part thereof within fourteen days after the date fixed by the order for such payment, but therein hath made default: These are therefore to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of — days after the making of such distress the said last-mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale over to the clerk of the justices of the peace for the division of — in the said [county, or as the case may be], that he may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said —; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.*

*Given under our [or my] hands and seal, this — day of —, in the year of our Lord One thousand eight hundred and —, at — in the [county] aforesaid.*

A. B.

C. D.

(L.S.)

*Costs and expenses, &c.] All reasonable costs and expenses from time to time incurred in making a complaint, or giving notice or in obtaining an order of justices under this Act, or in carrying the same into effect under this Act, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order be made on the local authority, or if no order be made, but the nuisance be proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, the said premises shall be and continue chargeable with such costs and expenses, and also with the amount of any penalties incurred under this Act, until the same be fully discharged, provided that such costs and expenses shall not exceed in the whole one year's rackrent of the premises; and such costs and expenses and penalties, together with the charges of suing for the same, may be recovered in any county or superior court, or, if the local authority think fit, before any two jus-*

tices of the peace; and the said justices shall have power to divide such costs, expenses and penalties between the persons by whose act or default the nuisance arises, in such manner as they shall consider reasonable; and if it appear to them that a complaint made under this Act is frivolous or unfounded, they may order the payment by the local authority or person making the complaint of the costs incurred by the person against whom the complaint is made, or any part thereof. *Id.* s. 19.

Where any costs, expenses, or penalties are due under or in consequence of any order of justices made in pursuance of this Act as aforesaid, any justice of the peace, upon the application of the local authority, shall issue a summons requiring the person from whom they are due to appear before two justices at a time and place to be named therein; and upon proof to the satisfaction of the justices present that any such costs, expenses, or penalties are so due, such justices, unless they think fit to excuse the party summoned upon the ground of poverty or other special circumstances, shall, by order in writing under their hands and seals, order him to pay the amount to the local authority at once, or by such instalments as the justices think fit, together with the charges attending such application and the proceedings thereon; and if the amount of such order, or any instalment thereof, be not paid within fourteen days after the same is due, the same may, by warrant of the said or other justices, be levied by distress and sale. *Id.* s. 20.

*Appeal.*] When it shall appear to the justices that the execution of structural works is required for the abatement of a nuisance, they may direct such works to be carried out under the direction or with the consent or approval of any public board, trustees, or commissioners having jurisdiction in the place in respect of such works; and if within seven days from the date of the order the person on whom it is made shall have given notice to the local authority of his intention to appeal against it as provided in this Act, and shall have entered into recognizances to try such appeal as provided by this Act, and shall appeal accordingly, no liability to penalty shall arise, nor shall any work be done nor proceedings taken under such order, until after the determination of such appeal, unless such appeal cease to be prosecuted. *Id.* s. 16. Also where justices by their order prohibit the recurrence of a nuisance the party may appeal. *Id.* s. 15.

Appeals under this Act shall be to the court of quarter sessions held next after the making of the order appealed against; but the appellant shall not be heard in support of the appeal unless within fourteen days after the making of the order appealed against he give to the local authority notice in

writing stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal, and shall within two days of giving such notice enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the said court, and to abide the order of and pay such costs as shall be awarded by the justices at such court or any adjournment thereof; and the said court, upon hearing and finally determining the matter of the appeal, may, according to its discretion, award such costs to the party appealing or appealed against as they shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons to all intents or purposes whatsoever: Provided always, that if there be not time to give such notice and enter into such recognizance as aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for, the next sessions at which the appeal can be heard; Provided also, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid; Provided also, that in any case of appeal the court of quarter sessions may, if they think fit, state the facts specially for the determination of Her Majesty's court of Queen's Bench, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or otherwise, into the said court of Queen's Bench. *Id.* s. 40.

*Actions, &c.]* The local authority, and any officer or person acting under the authority and in execution or intended execution of this Act, shall be entitled to such protection and privilege in actions and suits, and such exemption from personal liability, as are granted to local boards of health and their officers by the law in force for the time being. *Id.* s. 42.



## OVERSEERS OF THE POOR.

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### 1. THEIR APPOINTMENT.

<i>Who may be appointed</i> , 272.	<i>When</i> , 279.
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<i>For townships, hamlets, &amp;c.</i> , 274.	<i>Appointment how enforced</i> , 282.
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By stat. 43 Eliz. c. 2, s. 1, the churchwardens of every parish,—and four, three, or two substantial householders there, as shall be thought meet (having respect to the proportion and greatness of the parish), to be nominated yearly [on the 25th March or within fourteen days next after, 54 G. 3, c. 91,] under the hands and seals of two or more justices of the peace in the same county, whereof one to be of the *quorum*, dwelling in or near the same parish or division where the same parish doth lie,—shall be called overseers of the poor of the same parish.

*Who may be appointed.*] The churchwardens are overseers of the poor *ex officio*. But it is as to the appointment of the “four, or three, or two substantial householders,” above mentioned, who are to be overseers conjointly with them, that we shall treat of in this place. In the first place not more than four nor less than two shall be appointed: if more than four be appointed, the appointment will be bad (*R. v. Loxdale*, 1 Burr. 445. *R. v. Harman*, 1 Bott, 12); or if less than two be appointed, the appointment will be bad. *R. v. Clifton*, 2 East, 161. And they must be householders (*supra*): but a person occupying a house in a parish as a place of business merely, attending there daily, and his clerk living there, but he himself residing with his family elsewhere, has been holden to be a householder within the meaning of the statute. *R. v. Poynder*, 1 B. & C. 178. And the statute mentions substan-

tial householders: but where a township or village contained but three houses, and the occupiers of all three were appointed overseers, the appointment was holden good, although two of them were but labourers and poor. *R. v. Stubbs*, 2 T. R. 395. There is no objection also to a woman being appointed to the office. *Id.*

But peers and members of parliament,—justices of the peace (*R. v. Gayer*, 1 Burr. 245; 1 Ld. Ken. 492),—aldermen of London (*R. v. Abdy*, Cro. Car. 585),—clergymen (*Anon.* 1 Bott, 9),—dissenting ministers (1 W. & M. c. 18, s. 1; 52 G. 3, c. 155, s. 9),—practising barristers and attornies (*R. v. Prouse*, Cro. Car. 389),—members of the college of physicians (32 H. 8, c. 40),—members of the college of surgeons (18 G. 2, c. 15, s. 10),—apothecaries (6 & 7 W. 3, c. 4, ss. 2, 3),—officers of the courts of law (*Ex p. Jefferies*, 6 Bing. 195),—officers of the army and navy, even on half pay (*R. v. Gayer*, 1 Burr. 245; 1 Ld. Ken. 492),—officers of the customs and excise (*R. v. Warner*, 8 T. R. 375),—are exempt from serving the office. And persons concerned in contracts to supply goods to the workhouse, or for the use of the poor, are disqualified to be overseers. 12 & 13 Vict. c. 103, s. 6. So also are the chief and every other registrar, the accountant, the master, the official assignees, the messengers and the ushers of the Court of Bankruptcy (12 & 13 Vict. c. 106, s. 47); nor shall a master of a workhouse or any relieving officer be appointed an overseer. 13 & 14 Vict. c. 101, s. 6.

Formerly the overseer must have been a householder within the same parish. But now, justices of the peace, in their respective special sessions for the appointment of overseers of the poor, upon the nomination and at the request of the inhabitants of any parish in vestry assembled, may appoint any person who shall be assessed to the relief of the poor thereof, and shall be a householder resident within two miles from the church or chapel of such parish, or (where there shall be no church or chapel) shall be resident within one mile from the boundary of such parish,—to be an overseer of the poor thereof, although the person so to be appointed shall not be a householder within the parish of which he shall be appointed overseer; and it shall be sufficient, in every such appointment, to describe the person appointed by his name and residence: provided that no person shall be appointed to, or be compellable to serve, the office of overseer of the poor of any parish or place in which he shall not be a householder, unless he shall have consented to such appointment. 59 G. 3, c. 12, s. 6.

Where overseers are thus appointed for a township or place where there are no churchwardens, they may alone perform all the duties assigned by law to churchwardens and overseers. 17 G. 2, c. 38, s. 15.

*For parishes.]* By the stat. 43 El. c. 2, already mentioned *ante*, p. 272, overseers were to be appointed by parishes only. At the time of the passing of that statute, however, there were several places in England, which were parishes by reputation, that is to say, parochial chapelries, entirely independent of the mother church as to sacraments, sepulture, &c.; and these were holden to be parishes within the meaning of the statute *Nicholas v. Walker*, Cro. Car. 394. But they must be proved to have been so reputed at the time of the passing of the statute (*Hilton v. Pawle*, Cro. Car. 92); and they must have appeared to have had all parochial rights, and therefore to be entirely independent of the mother church. *Rudd v. Foster*, 4 Mod. 157. Where it appeared that in the parish of Whaplode in Lincolnshire, there was a district called Whaplode Drove, having a chapel which previously to the stat. 43 El. c. 2, had all parochial rights, and its own churchwardens separately from the parish; the clergyman of the chapel was maintained by the rents of certain lands with which it was endowed, but the tithes of the district were paid to the vicar of the parish; the district had its own overseers of the poor, had a separate poor rate (the amount in the pound, however, being always the same as in the rest of the parish), and it maintained its out of door poor separately, but there was no workhouse in the district, and the poor of the district requiring in-door relief were sent to the workhouse of the parish; and at the end of the year, the overseers of the district and those of the parish compared accounts, and those who had a surplus beyond their expenditure paid it over to the others: the court held that a separate rate for the district was bad; the fund for the relief of the poor of both districts was in substance a joint fund, and there was only one workhouse, which showed that the district had not been separated from the parish under stat. 13 & 14 Car. 2, c. 12; and the district could not be deemed to be in itself a parish or reputed parish at the time of the passing the stat. 43 El. c. 2, for in that case it must have had the entire separate maintenance of its own poor. *R. v. Clayton*, 18 Law J. 120, *m*.

*For townships, hamlets, &c.]* There were several parishes in England, however, to which, from their great extent or other cause, it was found extremely difficult to apply the statute 43 El. c. 2; although it might be applied conveniently and profitably to the different townships or villages comprised in each of them. And therefore by stat. 13 & 14 Car. 2, c. 12, s. 21, after reciting that "the inhabitants of the counties of Lancashire, Derbyshire, Yorkshire, Northumberland, the bishoprick of Durham, Cumberland, and Westmorland, and many other counties in England and Wales, by reason of the largeness of the parishes within the same, have not, or cannot

reap the benefit of stat. 43 El. c. 2,—it was therefore enacted, “ that all and every the poor, needy, impotent and lame person and persons within every township or village within the several counties aforesaid, shall, from and after the passing of this Act, be maintained, kept, provided for and set on work, within the several and respective township and village, wherein he, she or they shall inhabit, or wherein he, she or they was or were last lawfully settled, according to the intent and meaning of this Act; and that there shall be yearly chosen and appointed, according to the rules and directions in the said Act of the three-and-fortieth year of Queen Elizabeth mentioned, two or more overseers of the poor within every of the said townships or villages, who shall from time to time do, perform and execute all and every the acts, powers and authorities for the necessary relief of the poor within the said township or village, and shall lose, forfeit and suffer all such pains and penalties for non-performance thereof, as is limited, mentioned and appointed in and by the said in part recited Act.” 13 & 14 Car. 2, c. 12, s. 21.

And the justices of the peace within the said counties, shall have and enjoy such and the like powers and authorities to raise and levy moneys, and to do and execute all and every such other act and things whatsoever, within every township or village within the said county where they are justices, as is given, limited, and appointed unto and for them to do and execute within any parish or parishes in and by the said stat. 43 El. c. 2, under such and the like pains and penalties for the non-performance of their duties, to be levied and disposed of as is expressed in the said Act. *Id.* s. 22.

And since this statute, in a great number of parishes, divided into townships or villages, overseers have been appointed for each township and village, instead of being appointed for the parish generally, as under the statute of Elizabeth: and such townships, &c., have ever since respectively maintained their own poor. The statute has been holden to extend to all the counties of England and Wales (*Dolting v. Stokelane*, Fol. 99, Fort. 219. *Clifton v. Churcham*, 1 Nol. 10, Andr. 314), and to an extra-parochial place (*R. v. Rufford*, 1 Str. 512), provided it be a township or village. *R. v. Denham*, Burr. S. C. 37. *R. v. Welbeck*, 2 Str. 1143.

What is a township or village, was often a question of some difficulty to determine. A township always has a constable appointed for it; and so indicative is that circumstance of the place being a township, that Buller, J. (in *R. v. Horton*, 1 Bott, 54), is reported to have said, that wherever there is a constable there is a township. A village is not so easily defined. According to the common acceptation of the term, it consists of a considerable number of dwelling-houses, adjoining to each other, or in the same immediate neighbourhood,

and having usually a name by reputation. It must consist at least of more than two houses (*R. v. Denham*, Burr. S. C. 87, per Lee, J.): otherwise, although it may formerly have been a village, yet it has ceased to be so. S. C. per Page, J. A place, not called a village in the affidavits, which appeared to be a part of the old castle of Nottingham, was holden not to be a village within the meaning of the statute, although it consisted of upwards of twenty dwelling-houses, occupied by substantial householders. *R. v. Standard Hill*, 4 M. & S. 378. So, calling the district a "precinct" merely, would not be sufficient. *R. v. Severn and Arnold*, Say, 278. So, a place consisting of a capital messuage, and three cottages inhabited by labourers as tenants to the occupier of the messuage, was holden not to be a village within the meaning of the statute, although the sessions upon appeal had found and stated it to be so. *R. v. Showler et al.*, 3 Burr. 1391. So, the minster of Peterborough, being the area around the cathedral, was holden not to be a village within the meaning of the statute, although it consisted of sixty acres of land, having upwards of twenty-five dwelling-houses upon it. *R. v. JJ. of Peterborough*, Cald. 238. But where, in a case sent up for the opinion of the court of King's Bench, the sessions expressly found and stated the place to be a vill by reputation, the court considered themselves bound by the finding of the sessions, although it appeared that the place consisted only of three houses. *R. v. Ranton Abbey*, 2 T. R. 207.

Besides the place for which it was sought to have overseers separately appointed, being a township or village, it was necessary to show that the parish in which it was situate could not collectively have the benefit of the statute of Elizabeth; which, however, did not mean that it was impossible to execute the statute within the whole parish collectively, but that it was inconvenient. *R. v. Leigh*, 3 T. R. 746. And it was not necessary to prove that it was thus inconvenient at the time of the passing of the statute of Charles; if it had become so since, and were so at the time of applying to have overseers appointed to one of the townships, it would have been sufficient. *Id. per Buller and Ashurst, JJ.* Where the sessions, on motion, ordered a parish to be thus divided, and the different townships afterwards acted upon it for forty years; the order of sessions, then coming before the court of King's Bench, that court held it to be bad, as it stated no inability in the parish to reap the benefit of the statute of Elizabeth; and it was said that the sessions had no authority to make such an order, except on appeal. *Pearl v. Westgarth*, 3 Burr. 1610, and see *R. v. Newall*, 4 T. R. 266. *R. v. Uttoxeter*, Doug. 346.

The mode of dividing a parish thus, was by applying to two

justices to appoint overseers separately for one or more of the townships or villages within it. And in like manner, if it were required to have overseers appointed to an extra-parochial place, the application must have been made to two justices. If they refused an order, an application might be made to the court of Queen's Bench for a mandamus to compel them. Or if, on the other hand, the justices made the appointment, the party appointed might question its validity upon appeal to the quarter sessions; or it might be removed into the court of Queen's Bench by *certiorari*, and the validity of the order there determined upon a motion to quash it, the whole case on both sides being brought before the court upon affidavits. *R. v. Standard Hill*, 4 M. & S. 378.

But now, by stat. 7 & 8 Vict. c. 101, s. 22, after the passing of this Act (9 August, 1844), it shall not be lawful to appoint separate overseers for any township or village or other place for which before the passing of this Act separate overseers had not been lawfully appointed.

And it is hereby declared and enacted, that in all cases in which overseers have for the first time been separately appointed for any township or village since the fourteenth day of August, in the year of our Lord one thousand eight hundred and thirty-four, all orders of the poor law commissioners, determining the number of guardians, or ascertaining the averages of any such township or village, or of any portion of the parish from which such township or village had been separated, shall be and be deemed to be good and valid in law, notwithstanding such separate appointment of overseers. *Id.* s. 23.

After being separated, if from decrease of population or other change of circumstances, it become desirable that the different townships should again join in the maintenance of their poor, they might do so by agreement. *R. v. Palmer*, 8 East, 416. *Lane v. Cobham*, 7 East, 1. But the court would not compel this against the consent of any of the townships. *R. v. Leigh*, 3 T. R. 746.

Where part of a parish is in a corporate town, and separate overseers had been appointed for that part more than sixty years before the passing of this Act, the appointment shall be deemed valid. 59 G. 3, c. 95. See *R. v. Gordon*, 1 B. & A. 524.

It may be necessary to mention that "overseers of the poor, within every township or place where there are no churchwardens, shall from time to time do, perform and execute all and every the acts, powers and authorities concerning the relief of and other matters and things relating to the poor, as churchwardens and overseers of the poor may do, perform

and execute by this Act, or any former statute concerning the poor, and shall lose, forfeit, and suffer all such pains and penalties for neglect, abuse, or non-performance thereof, as churchwardens and overseers of the poor are liable to by virtue of this or any former statute concerning the poor." 17 G. 2, c. 38, s. 15.

*For extra-parochial places.*] Bystat. 20 Vict. c. 19, s. 1, after the 31st day of December, 1857, every place entered separately in the report of the registrar-general on the last census which now is or is reputed to be extra-parochial, and wherein no rate is levied for the relief of the poor, shall for all the purposes of the assessment to the poor rate, the relief of the poor, the county, police, or borough rate, the burial of the dead, the removal of nuisances, the registration of parliamentary and municipal voters, and the registration of births and deaths, be deemed a parish for such purposes, and shall be designated by the name which is assigned to it in such report; and the justices of the peace having jurisdiction over such place or over the greater part thereof shall appoint overseers of the poor therein. 20 Vict. c. 19, s. 1.

And with respect to any other place being or reputed to be extra-parochial, and wherein no rate is levied for the relief of the poor, such justices may appoint overseers of the poor therein, notwithstanding anything contained in stat. 7 & 8 Vict. c. 101. *Id.*

And if in any extra-parochial place it shall appear to the justices that two overseers cannot conveniently be appointed from the inhabitant householders thereof, or are not required for such place, such justices may appoint one only; and if it shall appear to them that there is no such householder liable or fit to be appointed they shall appoint some inhabitant householder of an adjoining parish willing to serve to be such overseer, either with or without an annual salary, such salary, if any, to be approved of by the Poor Law Board, and to be paid out of the poor rate of such place; and such last-mentioned appointment shall enure until the usual time of the appointment of overseers, and may be renewed from year to year as long as the justices shall find necessary. *Id.* s. 2.

And the overseers or overseer appointed under the authority of this Act shall have all the powers, authorities, privileges, exemptions, and protections which overseers now or hereafter shall possess, and shall be subject to all the obligations, responsibilities, penalties, and consequences which overseers are now or may hereafter be liable to. *Id.* s. 6.

Or if the owners and occupiers respectively of the land comprised in any extra-parochial place owning and occupying two-thirds in value at least of such land shall express their

desire in writing, signed by such major part, that such place be comprised in or annexed to any parish [township, &c. (see *Id.* s. 11, 4 & 5 W. 4, c. 76, s. 109),] for the purposes aforesaid, and such parish shall consent thereto, such consent to be expressed by a resolution of the vestry, after due notice, the justices of the peace in quarter sessions assembled, or the recorder of the borough if such place be situated within a borough subject to the jurisdiction of a recorder, may make an order for the annexation of such place to such parish, and thenceforth the same shall be deemed to be part of the said parish for all such purposes. *Id.* s. 4.

Provided that nothing above contained shall apply to any extra-parochial place in respect whereof there shall be any agreement with any parish as to the liability of such place to contribute to the poor rate of such parish contained in any Act of Parliament. *Id.* s. 7.

And lastly, where there is any extra-parochial place contained in or adjoining to any district comprising any parish or parishes [township or townships (see *Id.* s. 11, 4 & 5 W. 4, c. 76, s. 109),] in which district the relief of the poor is administered under the authority of a local Act, the Poor Law Board may, with the consent of the occupiers and owners of two-thirds in value of the land comprised in such place, and with the consent of the guardians acting in that district, by order direct such place to be added, for the purposes of administration of relief to the poor, to such district, upon such conditions and subject to such provisions and regulations as shall appear to them to be necessary for such purposes. *Id.* s. 8.

*When.]* Overseers shall be appointed on the 25th March, or within fourteen days next after it. 54 G. 3, c. 91. This statute, however, is directory only, and does not render an appointment void which is made at another time. *R. v. Sparrow*, 2 Str. 1123. Where the justices met at special sessions, on the 1st March, for the purpose of appointing overseers for the several parishes and townships within their division, they appointed for all but one township, and as to that, they adjourned the special sessions to the 14th April, to make some inquiries as to the fitness of certain persons for the office, and on the 14th April they accordingly met, and made the appointment; but in the meantime, namely, on the 1st April, a justice of the peace of the division, imagining that an appointment on the 14th April would be bad, as being more than fourteen days from the 25th March, appointed two overseers for the township: Coleridge, J., however, held that an appointment on the 14th April was good, the statute being directory merely in this respect; and as the justices at special



sessions had possessed themselves of the matter, and alone had jurisdiction over it, it was not competent to any other justice, in the mean time, to make another appointment. *R. v. Sneyd et al.*, 9 Dowl. 1001; S. C. nom. *R. v. JJ. of Staffordshire*, 10 Law J. 166, *m.*

Also, if an overseer die, or remove from the place for which he was appointed, or become insolvent, before the expiration of his office, two justices of the peace, on oath thereof made, may appoint another overseer in his stead, who shall continue in office until new overseers are appointed. 17 G. 2, c. 38, s. 3.

*How* ] In parishes in counties, overseers are to be "nominated under the hands and seals of two or more justices of the peace in the same county, whereof one to be of the quorum, dwelling in or near the same parish or division where the same parish doth lie" (43 El. c. 2, s. 1); and the same as to townships or villages. 13 & 14 Car. 2, c. 12, s. 21. In cities or towns or places corporate, the appointments were formerly by the mayors, bailiffs, or other head officers being justices of the peace (43 El. c. 2, s. 8; and see *R. v. Preston*, 18 Law J. 10, *m.*); but now, by stat. 12 & 13 Vict. c. 8, s. 1, "in every city, town corporate or borough, the justices of the peace having jurisdiction therein [whether they be justices of the city or borough, or of the county in which the same is situate, 15 & 16 Vict. c. 38] shall have the exclusive right of appointing the overseers of the poor of the several parishes, townships or other places separately maintaining their own poor, or of any parts thereof, within the said cities, towns corporate, and boroughs respectively, in like manner and with the same effect as the justices of any county now have in respect of the overseers of the poor of any parish within such county." And if a parish lie in two or more counties—or part within the liberties of a city or town corporate, and part without, then as well the justices of the peace of every county, as also the [justices] of such city or town corporate, shall nominate the overseers (43 El. c. 2, s. 9); but when appointed, they shall act indiscriminately for the whole parish. *R. v. Butler et al.*, 1 Bott, 16.

In counties, the nomination and appointment take place at a special sessions of the justices of each division of the county. Previously to which, however, two justices direct their precept to the high constable of the hundred, in this or the like form:—

*Berkshire:—To J. S., gentleman, high constable of the hundred of —, in the said county.*

*We, two of Her Majesty's justices of the peace for the*

*said county of —, one whereof is of the quorum, do hereby require you forthwith to issue your warrants to the several petty constables within your said hundred, in the form or to the effect as on this our warrant is endorsed. Given under our hands and seals, the — day of —, in the year of our Lord —.*

And the form indorsed is thus:—

*Berkshire, hundred of —. To the constable of —.*

*By virtue of a precept to me directed by —, two of Her Majesty's justices of the peace for the county aforesaid (one whereof is of the quorum), you are hereby required forthwith to give notice to all and every the overseers of the poor within your constablewick, that they make out a list in writing of a competent number of substantial householders, within their respective parishes or townships, and deliver the same to Her Majesty's justices of the peace for the said county, at a special sessions, to be holden at —, on —, at the hour of —; to the end that, out of the said lists, the said justices may appoint other overseers of the poor for the year then next ensuing. And you are hereby also required to give notice to all justices of the peace for the said county residing within your constablewick, of the time and place appointed for holding the said special sessions. And be you then there to certify what you shall have done in the premises. Herein fail not. Given under my hand, the — day of —, in the year of our Lord —.*

And afterwards, upon the return of these lists to the special sessions, the justices nominate two, three, or four of the persons in each list, as the overseers of such parish or township, according to its size and importance, being the number usually appointed. The appointment must be by a majority of the justices present. Where at a special sessions for appointing overseers of the poor three of the justices present took upon themselves to appoint overseers for the parish of Manchester, without consulting the several other justices who were present at the time; and for this conduct, a rule nisi for a criminal information was obtained; but upon showing cause, it appearing that this was done from a mistake of the justices as to their authority, the court discharged the rule, but without costs: they, however, desired it to be understood, that all the justices present at such special sessions, when overseers are appointed, must be consulted upon the appointment, and the appointment must be by a majority of them. *R. v. JJ. of Lancashire, MS. T. 1840.* Still, however, until the appointment is quashed, the acts of overseers thus

appointed will be valid: for instance, a rate made by such overseers is valid, and may be enforced. *Penny v. Slade*, 5 Bing. N. C. 319.

The appointment is drawn up in the following form:—

*Berkshire, to wit: We, two of Her Majesty's justices of the peace for the said county, one whereof is of the quorum, do hereby nominate and appoint A. B. [&c.], being substantial householders of and in the [parish] of —, in the said county, to be overseers of the poor of the said [parish] [together with the churchwardens thereof], for the present year: according to the directions of the statute in such case made and provided. Given under our hands and seals, this — day of —, in the year of our Lord —.*

The words "for the present year," have been holden to be sufficient, as they shall be intended to mean the overseers' year. *R. v. Helling*, 3 Burr. 1904. So, for "one whole year" (*R. v. Jones*, 1 Bott, 27), or for "one year next ensuing," (*R. v. Burden*, 4 T. R. 778. *R. v. Stubbs*, 2 T. R. 395), have been holden to be sufficient. After thus appointing overseers, the justices are *functi officio*, and cannot alter their appointment. *R. v. Great Marlow*, 2 East, 244. A copy of this appointment should be served on each of the overseers named in it.

The overseers thus appointed remain in office for the time only which is thus mentioned in their appointment.

If the magistrates fail to make the appointment, the court of Queen's Bench will compel them to do so by *mandamus*; and, by stat. 43 El. c. 2, s. 10, every justice of the peace of the county dwelling within the division where such default of nomination shall happen, and every mayor, alderman, and head officer of the city or town corporate where such default shall happen, shall forfeit for every such default 5*l.*, to be levied of their goods by warrant from the general sessions of the peace of the said county or city, &c., if they have sessions.

*Appointment, how enforced.]* If any overseer thus appointed refuse to serve the office, he will be guilty of a misdemeanor at common law, for which he may be indicted. *R. v. Jones*, 2 Str. 1146.

*Appeal against the appointment.]* If any person thus appointed feel himself aggrieved by the appointment, he may appeal against it to the general quarter sessions. 43 Eliz. c. 2, s. 6. And it has been holden also that the parishioners may appeal against the appointment, as parties aggrieved within

the meaning of the statute. *R. v. Forrest*, 3 T. R. 38, and see *R. v. J.J. of St. Alban's*, 3 B. & C. 608. The statute makes no mention of notice of appeal; and therefore the notice must be such merely as is required by the practice of the particular sessions to which the party appeals.

The appointment may also be removed into the court of Queen's Bench by *certiorari*, for the purpose of having it quashed. And that court will thereupon examine into the validity of the appointment upon affidavit. *R. v. Standard Hill*, 4 M. & N. 378. But the court have refused to grant a *mandamus* to overrule, commanding them to produce their appointment for the inspection of a rated inhabitant,—the defect suggested to such appointment being properly the subject of an appeal to the sessions. *R. v. Harrison et al.*, 16 Law J. 33, m.

## 2. THEIR DUTIES.

*Their Duty in Relieving the Poor in single Parishes, &c., where there are no Guardians or Select Vestry, p. 284.*

*Their Duty in Relieving the Poor in Parishes in Unions or under Select Vestries, p. 291.*

*Their Duty in connection with the Election of Guardians, p. 294.*

*Their Duty in Removing the Poor, p. 295.*

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*Their Duty in Relieving the Poor in single Parishes, &c., where there are no Guardians or Select Vestry.*

*Parish poor, 284.*

*Able-bodied poor, 286.*

*Casual poor, 287.*

*Prisoners, 288.*

*In the workhouse, 289.*

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*Parish poor.*] Under this head "Parish poor," may be classed all poor persons residing in the parish or township, &c., who may become actually chargeable to it, whether such parish or township, &c., be their place of settlement or not. If they be legally settled in the parish, &c., or if they be English and have no place of settlement, the parish officers must continue to relieve them as long as they really require relief; but if they be settled elsewhere, or be natives of Ireland or Scotland, &c., who have not acquired a settlement in this country, they may be removed, in the manner described, p. 202.

By stat. 43 Eliz. c. 2, s. 1, the churchwardens and overseers of every parish, or the greater part of them, shall take order from time to time, by and with the consent of two or more justices of the peace, for setting to work the children of all such whose parents shall not by the said churchwardens and overseers or the greater part of them be thought able to keep and maintain their children; and also for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by; and also to raise, weekly or otherwise, a convenient stock of flax, hemp, wool, thread, iron, and other necessary ware and stuff, to set the poor on work; and also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind, and such other among them, being poor and not able to work; and also for the putting out of such children to be apprentices; and to do and execute all

other things, as well for the disposing of the said work, as otherwise concerning the premises, as to them shall seem convenient. And by sect. 4, the said justices, or any of them, may send to the house of correction or common gaol such as shall not employ themselves to work, being appointed thereto, as aforesaid.

All this however shall be subject to the direction and control of the poor law commissioners, who are authorized and required, from time to time, as they shall see occasion, to make rules, orders, and regulations upon the subject; but they shall not interfere in any individual case, for the purpose of ordering relief. 4 & 5 W. 4, c. 76, s. 15.

As a control upon parish officers, however, the stat. 3 W. & M. c. 11, s. 11, after reciting that "many inconveniences do daily arise in cities, towns corporate, and parishes, where the inhabitants are very numerous, by reason of the unlimited power of the churchwardens and overseers of the poor, who do frequently, upon frivolous pretences (but chiefly for their own private ends), give relief to what persons and number they think fit; and such persons, being entered into the collection bill, do become after that a great charge to the parish, notwithstanding the occasion or pretence of their receiving collection oftentimes ceases, by which means the rates of the poor are daily increased, contrary to the true intention of a statute made in the forty third year of the reign of Her Majesty Queen Elizabeth, intituled 'An Act for the Relief of the Poor;'—enacts that for remedying of the same, and preventing the like abuses for the future, 'there shall be provided and kept in every parish (at the charge of the same parish), a book or books, wherein the names of all such persons who do or may receive collection shall be registered, with the day and year when they were first admitted to have relief, and the occasion which brought them under that necessity; and that yearly in Easter week (as often as it shall be thought convenient), the parishioners of every parish shall meet in their vestry, or other usual place of meeting in the same parish, before whom the said book shall be produced, and all persons receiving collection to be called over, and the reasons of their taking relief examined, and a new list made and entered, of such persons as they shall think fit and allow to receive collection; and that no other person be allowed to have or receive collection at the charge of the said parish, but by authority under the hand of one justice of peace residing within such parish, or (if none be there dwelling) in the parts near or next adjoining, or by order of the justices in their respective quarter sessions, except in cases of pestilential diseases, plague or small-pox, for and in respect of such families only as are or shall be therewith infected.'"

3 W. & M. c. 11, s. 11.

*Able-bodied poor.*] By stat. 4 & 5 W. 4, c. 76, s. 52, after reciting that "a practice has obtained of giving relief to persons or their families, who, at the time of applying for or receiving such relief, were wholly or partially in the employment of individuals, and the relief of the able-bodied and their families is in many places administered in modes productive of evil in other respects; and whereas difficulty may arise in case any immediate and universal remedy is attempted to be applied in the matters aforesaid:" it is enacted, "that from and after the passing of this Act it shall be lawful for the said commissioners, by such rules, orders, or regulations, as they may think fit, to declare to what extent and for what period the relief to be given to able-bodied persons or to their families in any particular parish or union may be administered out of the workhouse of such parish or union, by payment of money, or with food or clothing in kind, or partly in kind and partly in money, and in what proportions, to what persons or class of persons, at what times and places, on what conditions, and in what manner, such out-door relief may be afforded; and all relief which shall be given by any overseer, guardian, or other person having the control or distribution of the funds of such parish or union, contrary to such rules or regulations, shall be, and the same is hereby declared to be unlawful, and shall be disallowed in the accounts of the person giving the same, subject to the exceptions hereinafter mentioned." The section then provides for delaying the introduction of such regulations, in particular parishes, where from circumstances they may be deemed inexpedient, until communication can be had with the poor law commissioners. It also provides, "that in case the overseers or guardians of any parish or union, in which such orders or regulations shall be in force, shall depart from them or any of them in any particular instance or instances of emergency, and shall within fifteen days after every such departure report the same and the grounds thereof to the said commissioners, and the said commissioners shall approve of such departure,—or if the relief so given shall have been given in food, temporary lodging, or medicine, and shall have been so reported as aforesaid,—then and in either of such cases the relief granted by such overseers or guardians, if otherwise lawful, shall not be unlawful or subject to be disallowed. *Id.* s. 52.

Before this statute, justices were authorized to order relief to poor persons in their dwellings, during any time not exceeding a month. 36 G. 3, c. 23. This time was afterwards extended to six months; and the justices were permitted to renew the order, from time to time, as they might think fit. 55 G. 3, c. 137, s. 3. In parishes, also, under select vestries or guardians, justices were authorized to make a similar order, to continue in force for a month. 59 G. 3, c. 12,

ss. 1, 5. But these statutes are now repealed. 4 & 5 W. 4, c. 76, s. 53.

In the absence of such rules as are above mentioned, it may be prudent for overseers to consult and follow the rules laid down by the poor law commissioners with respect to unions, by their order of the 21st December, 1844: and which are stated *ante*, p. 143.

As to the relief of married women and widows, see *ante*, p. 149.

*Casual poor.*] Casual poor are those poor persons who are not settled in the parish nor reside there, but who happen casually to be there at a time when, from some accident occurring to them, or from their being suddenly afflicted with some illness, they are obliged to resort to the parish officers for relief. These must be relieved by the parish officers of the parish in which they thus become chargeable; and they are not removable to their place of settlement whilst necessarily detained by their illness, or the effects of the accident, &c. And therefore, where a farmer's servant, settled in Ixworth, having driven his master's team, with a load of hay to the parish of St. James, in Bury St. Edmund's, and being ordered to bring home a load of manure, fell and broke his leg in loading the manure, and was confined for some time in the parish of St. James; and an order of removal was made in the first instance, but suspended until he was able to be removed, when the suspension was taken off, and an order made on the parish of Ixworth for the expenses of his cure, &c.; but the court held the order of removal to be wrong, as the pauper did not come to St. James's to settle or inhabit; he was there merely as casual poor, and irremovable either under stat. 13 & 14 C. 2, or 35 G. 3, c. 101. *R. v. St. James in Bury St. Edmunds*, 10 East, 25. So where a pauper, legally settled in the parish of Leinthall Starks, being in the parish of Bromfield with his master's team, was thrown down by the horses and his thigh broken; he was carried to Ludlow, where he remained until he recovered: but shortly after his being carried to Ludlow, the magistrates there made an order for his removal to Leinthall Starks, but suspended it until he could be removed with safety: the court however quashed the order; they held that no person can be the subject of an order of removal but one who comes to settle in the removing parish; the pauper here was casual poor in Ludlow, and irremovable. *R. v. Lawrence, Ludlow*, 4 B. & A. 660. So, where an infant, concealed in a parcel, was left by its mother at the foundling hospital, and she escaped before the persons at the hospital were aware of the contents of the parcel; the child was holden to be casual poor in the parish in which the hospital was situate, and that the overseers were



bound to relieve and provide for it. *R. v. Pancras*, 7 Ad. & El. 750. In all such cases it is the duty of the parish or union; where the pauper becomes casual poor, to relieve him, and pay the expenses attending his cure there. See *Tomlinson v. Bentall*, 5 B. & C. 738. *Lamb v. Bunce*, 4 M. & S. 275. *Gent v. Tomkins*, 5 B. & C. 746, n. *Atkins v. Banwell*, 2 East, 505.

See as to casual poor in unions, *ante*, p. 151.

*Prisoners.*] Any one justice of the peace acting for the county, riding, or division in which a gaol (not being a county gaol) is situate, may order the overseers of the poor of the parish or place wherein such gaol is situate, to relieve any poor person who shall be confined in such gaol under mesne process for debt, and who shall appear to such justice to be unable to support himself or herself, and who shall have applied for relief to such overseers as aforesaid (52 G. 3, c. 160, s. 1); such relief not to exceed 6d. *per diem*. *Id.* s. 2. The overseer may then have the prisoner examined as to his settlement, and the justice shall thereupon make an order for his removal accordingly, but shall suspend the execution thereof during the time he shall be confined (*Id.* s. 3); which order shall be served upon the overseers of the parish to which he is adjudged to belong (*Id.* s. 4), who may appeal against the same (*Id.* s. 6); and any justice of the peace may order the latter overseers to repay to the former all charges incurred by them in granting relief to the pauper, and if they refuse the amount may be levied by distress upon their goods. *Id.* s. 5. If however the pauper have no settlement, in that case the sums expended by the overseers shall be repaid to them out of the county rate, by the treasurer of the county. *Id.* s. 7.

As to the prisoners for debt in the Queen's Bench, Marshalsea, and Fleet prisons, by stat. 53 G. 3, c. 113, s. 2, the treasurer of every county and division specified in a schedule to that Act, shall on or before the first day of August in every year pay unto the treasurer of the county of Surrey, for the prisoners in the Queen's Bench and Marshalsea prisons, and to the Chamberlain of London, for the prisoners in the Fleet prison, the sums respectively mentioned in such schedule (sect. 2); and the court of Queen's Bench, Common Pleas, and of the Marshalsea, may enforce payment of the same, by rules of court. *Id.* s. 6. The statute then provides for the manner in which the money is to be distributed, and by and amongst whom. Since the passing of this Act, however, the Fleet and Marshalsea prisons have been abolished, and the prison of the Queen's Bench is now to be called "the Queen's prison." 5 & 6 Vict. c. 22.

Prisoners confined for treason, felony, or misdemeanor, are maintained at the expense of the county, &c., in which the prison is situate where they are confined.

*In the workhouse.]* By stat. 9 G. 1, c. 7, s. 4, if any poor person in any parish, town, township, or place, where there is a workhouse, shall refuse to be lodged, kept or maintained in such house, such poor person so refusing "shall be put out of the book or books where the names of the persons who ought to receive collection in the said parish, town, township, or place are to be registered, and shall not be entitled to ask or receive collection or relief from the churchwardens and overseers of the same parish, town, or township;" and the like, where two or more parishes or townships have one workhouse in common, or where one parish or township contracts with another for the maintenance of their poor in the workhouse of the latter. But the person to be relieved, is the only person that can be compelled to go into the workhouse, within the meaning of this Act; and therefore where a woman applied for relief for her bastard child, it was holden that the parish officers were not justified in refusing it, because the mother refused to go into the workhouse. *R. v. High et al.*, 3 T. R. 637.

This enactment, in time, was deemed inconvenient and oppressive to the poor; and therefore by stat. 36 G. 3, c. 23, justices were empowered to order relief to poor persons in their dwellings, during any period not exceeding a month; and by stat. 55 G. 3, c. 137, s. 3, this time was extended to six months, and the justices might renew the order from time to time as they thought fit. This, on the other hand, led to the practice of relieving able-bodied persons, and not only those who were unemployed, but also those who were in employment, but whose wages were thought to be insufficient for the maintenance of themselves and families. The result of this was, in many instances, an indifference on the part of the poor, whether they were employed or not, or at what wages,—a state of things at once prejudicial to the ratepayer and to the poor themselves. These two last-mentioned statutes were therefore repealed by stat. 4 & 5 W. 4, c. 76, s. 53. So that the law remains now the same as under the stat. 9 G. 1, c. 7, above mentioned, subject of course to the control and orders of the poor law commissioners upon the subject.

*Out of the workhouse.]* By stat. 3 W. & M. c. 11, s. 11, we have seen (*ante*, p. 283), a list is to be made of poor persons to whom the parishioners in vestry agree that relief shall be given; and the overseers shall not give relief to any other persons, without an order from a justice of the peace.

And by stat. 9 G. 1, c. 7, s. 1, after reciting this Act, it is enacted that "no justice of the peace shall order relief to any poor person dwelling in any parish,—until oath be made before such justice of some matter which he shall judge to be a reasonable cause or ground for having such relief,—and that the same person had by himself, herself, or some other, applied for relief to the parishioners of the parish, at some vestry or other public meeting of the said parishioners, or to two of the overseers of the poor of such parish, and was by them refused to be relieved,—and until such justice had summoned two of the overseers of the poor to show cause why such relief should not be given, and the person so summoned hath been heard, or made default to appear before such justice."

And the person whom any such justice of peace shall think fit to order to be relieved, shall be entered in such book or books so to be kept by the parish, as one of those who is to receive collection, as long as the cause for such relief continues, and no longer; and no officer of any parish shall (except upon sudden and emergent occasion) bring to the account of the parish any moneys he shall give to any poor person of the same parish, who is not registered in such book or books to be kept by the said parish, as a person entitled to receive collection, on pain of forfeiting the sum of five pounds, to be levied by distress and sale, by warrant of any two or more justices of the peace of the same county, who shall have examined into and found him guilty of such offence: which said sum shall be applied to and for the use of the poor of the said parish, by direction of the said justices of the peace. 9 G. 1, c. 7, s. 2. The conviction for this offence is in the ordinary form, stat. 11 & 12 Vict. c. 43, sch. I. 1, and the warrant of distress may be in the form there stated.

There were also some statutes, which enabled justices to order relief for a limited time (36 G. 3, c. 23; 55 G. 3, c. 127, s. 3), and in cases where the poor were under guardians, governors or directors, by virtue of local Acts, or under a select vestry (59 G. 3, c. 12, ss. 1, 5): but these have been repealed. 4 & 5 W. 4, c. 76, s. 53.

Formerly also the order must have been made by two justices, except in cases of emergency, where an order by one would have been sufficient. 59 G. 3, c. 12, s. 5. But this section is now repealed (4 & 5 W. 4, c. 76, s. 53); and it should seem that an order by one justice would now in all cases be sufficient.

If the pauper be in another parish, the order cannot compel the overseers to go there to relieve him, or to send relief to him, even although he be so unwell that he cannot be removed (*Clypton St. Mary's v. Ravistock in Devon*, Set. & Rem. 31, pl. 49); he must either come personally to claim relief, or he must apply to the overseers of the parish where

he is residing, who may thereupon obtain an order to remove him, or, if from illness he cannot be removed, the order may be suspended. The only exception to this is, in the case of infants having a different settlement from their mother, and residing in another parish with their mother for nurture; if they become chargeable to such other parish, any justice acting for such parish may make an order for their relief upon the overseers, &c., of the parish where they are settled, (*R. v. Hemlington*, Cald. 6. *Shermanbury v. Bolney*, Carth. 279. *Wrangford v. Brandon*, Carth. 449), provided the mother or her husband be not able to maintain them. See 4 & 5 W. 4, c. 76, ss. 56, 57, 71. The court however will not grant a *mandamus* to justices to compel them to make such an order (*R. v. J.J. of Middlesex*, 4 B. & A. 298); at least not until the place of settlement of the children shall have first been adjudged.

The relief in such cases is given in money or food, &c. But there are other ways in which overseers are enabled by law to relieve the poor. They may set up trades for their employment. 3 Chas. 1, c. 4, s. 22; see 22 G. 3, c. 83, s. 32. They may provide land for their employment. 59 G. 3, c. 12, s. 12; 1 & 2 W. 4, c. 42, s. 1. They may inclose waste land for the same purpose. 1 & 2 W. 4, c. 42, s. 2. They may let land to them in small portions. 59 G. 3, c. 12, s. 13; 1 & 2 W. 4, c. 42, ss. 1-10. They may build houses for them upon the waste. 43 Eliz. c. 2, s. 6. They may contract with others for their maintenance and management. 9 G. 1, c. 7, s. 4; 45 G. 3, c. 54; 22 G. 3, c. 83, s. 2; 50 G. 3, c. 50, s. 2; 4 & 5 W. 4, c. 76, s. 49; 12 & 13 Vict. c. 13, s. 1. They may compel their parents or relations to contribute to their maintenance. 43 Eliz. c. 2, s. 7; 59 G. 3, c. 12, s. 26; 4 & 5 W. 4, c. 76, s. 78. They may compel husbands and fathers to repay the amount of relief given to their wives and children. 4 & 5 W. 4, c. 76, ss. 56, 57. They may proceed to punish persons who, being able to maintain themselves or families, refuse or neglect to do so (5 G. 4, c. 83, s. 3); or persons running away, and leaving their wife or child chargeable to the parish. *Id.* They may charge widows with relief given to their children (4 & 5 W. 4, c. 76, s. 56); or the mothers of illegitimate children, with relief given to the children. *Id.* s. 71.

*Their Duty in Relieving the Poor in Parishes, in Unions,  
or under Select Vestries.*

By stat. 4 & 5 W. 4, c. 76, s. 54, the ordering, giving, and directing of all relief to the poor of any parish, which, according to the provisions of stat. 22 G. 3, c. 83, or 59 G. 3, c. 12, or of 1 & 2 W. 4, c. 80, or of this Act, or of any local

Acts, shall be under the government and control of any guardians of the poor, or of any select vestry, and whether forming part of any union or incorporation or not (but subject in all cases to, and saving and excepting the powers of the said commissioners appointed under this Act), shall "appertain and belong exclusively to such guardians of the poor, or select vestry, according to the respective provisions of the Acts under which such guardians or select vestry may have been or shall be appointed; and it shall not be lawful for any overseer of the poor to give any further or other relief or allowance from the poor rate, than such as shall be ordered by such guardians or select vestry, except"—

1st, "In cases of sudden and urgent necessity, in which cases he is hereby required to give such temporary relief as each case shall require, in articles of absolute necessity, but not in money, and whether the applicant for relief be settled in the parish where he shall apply for relief or not: provided always, that in case such overseer shall refuse or neglect to give such necessary relief in any such case of necessity to poor persons not settled nor usually residing in the parish to which such overseer belongs, it shall and may be lawful for any justice of the peace to order the said overseer, by writing under his hand and seal, to give such temporary relief in articles of absolute necessity, as the case shall require, but not in money; and in case such overseer shall disobey such order, he shall, on conviction before two justices, forfeit any sum not exceeding five pounds which such justices shall order:"

2ndly. "That any justice of the peace shall be empowered to give a similar order for medical relief (only) to any parishioner, as well as out-parishioner, where any case of sudden and dangerous illness may require it; and any overseer shall be liable to the same penalties as aforesaid for disobeying such order: but it shall not be lawful for any justice or justices to order relief to any person or persons from the poor rates of any such parish, except as hereinbefore provided." *Id.* s. 54.

As to the power of the overseers to give orders for the admission of paupers to a union workhouse, see *ante*, tit. "*Guardians of the Poor*," pp. 155, 156.

The duties of churchwardens and overseers of parishes, &c., in unions, are thus laid down in an order of the poor law commissioners, dated the 22nd of April, 1842:—

*Art.* 1. If any overseer of the poor of any parish shall, in any case of sudden and urgent necessity, have given temporary relief to any poor person in articles of necessity, or, in any case of sudden and dangerous illness, shall have given an order for medical relief, the said overseer shall forthwith report such case in writing to the relieving officer of the district, or to the

board of guardians of the union, and the amount of such relief, or the fact of having made such order.

*Art. 2.* If any overseer of the poor of any parish receive an order under the hands and seal of two justices, according to the provisions of the said Act, directing relief to be given to any aged or infirm person, without such person being required to reside in any workhouse, he shall forthwith transmit the same to the relieving officer of the district, to be laid before the guardians at their next meeting, that they may be enabled without delay to give to the relieving officer the necessary directions, as to the amount and nature of the relief to be given.

*Art. 3.* If any overseer receive an order for medical relief from any justice in case of sudden and dangerous illness, he shall, as soon as may be after complying with such order, report the fact of his having received the same, and the manner in which he has complied with it, in writing to the relieving officer of the district, or to the board of guardians of the union.

*Art. 5.* And we do further order and direct the overseers of the poor of every parish in the union—

Firstly. From time to time to provide *rate books* according to the form (A.) hereunto annexed; and duly and punctually to make the entries therein of the several matters mentioned in the headings of the several columns of the said form; and to cause every rate for the relief of the poor in the township, and the allowance of such rate by the justices, to be recorded in the said rate book.

Secondly. To pay over from time to time out of the poor rates collected, all such sums as by any order of the guardians addressed to them in writing, according to the form set forth in the order of the poor law commissioners, bearing date the [24th July, 1847, see *ante*, p. 138], shall be directed to be provided from the poor rates of the parish (see *R. v. Overseers of Todmorden and Walsden*, 1 Q. B. Rep. 185); and to pay over such sums to such person or persons, at such times and places as by the same order shall be directed, and to take the receipt of such person or persons; and to produce such order and such receipt as their vouchers for such payments before the auditor of the said union in passing their quarterly accounts.

Thirdly. To submit, within forty days after each of the following days, namely, Lady Day, Midsummer Day, Michaelmas Day, and Christmas Day, to the auditor of the union, a distinct account and balance sheet, exhibiting the amount collected by them and the amount disbursed by them during the previous quarter, together with the proper vouchers for the same.

Fourthly. To enter in some book, to be from time to time provided for that purpose, the names and addresses of the owners and proxies, who shall send statements of their claims to vote, and the assessment of the poor rate on the property in respect whereof they respectively claim to vote, which book may be kept in the form annexed to the order.

*Their Duty in connexion with the Election of Guardians.*

By Art. 4 of the before-mentioned order of 22nd April, 1842, the overseers are to perform such duties in connexion with the election of guardians for the union, as may be imposed upon the overseers by any regulations of the poor law commissioners in force at the time.

The following are the duties of the overseers in connexion with the election of guardians as prescribed by the consolidated order of the poor-law commissioners :—

*Art. 1.* The overseers of every parish in the union shall, before the twenty-sixth day of March in every year, distinguish in the rate-book the name of every rate-payer in their parish who has been rated to the relief of the poor for the whole year immediately preceding the said day, and has paid the poor rates made and assessed upon him for the period of one whole year, except those which have been made or become due within the six months immediately preceding the said day.

*Art. 5.* The overseers of every parish in the union, and every officer having the custody of the poor rate books of any such parish, shall attend the clerk at such times as he shall require their attendance, until the completion of the election of guardians, and shall, if required by him, produce to him such rate-books, and the registers of owners and proxies, together with the statements of owners, and appointments and statements of proxies, and all books and papers relating to such rates in their possession or power.

Provided that, where any register of owners shall have been prepared in any parish containing a population exceeding two thousand persons, it shall not be necessary to produce the statements of owners.

*Art. 26.* The overseers shall affix, or cause to be affixed, at the usual places for affixing in each parish notices of parochial business, copies of a list which will be sent to them by the clerk to the union, containing the names of the candidates, together with (in case of a contest) the number of votes given for each, and the names of the elected guardians, in the form marked (E.) hereunto annexed.

By the order of 22nd April, 1842, the overseers are further required to enter in some book, to be from time to time pro-

vided for that purpose, the names and addresses of the owners and proxies, who shall send statements of their claims to vote, and the assessment of the poor rate on the property, in respect whereof they respectively claim to vote, in pursuance of the regulation in the 7 & 8 Vict. c. 101, s. 15.

*Their Duty in Removing the Poor.*

<i>In what cases generally, and how, 295.</i>	<i>Irish and Scotch paupers, see ante, p. 202.</i>
<i>In particular cases, 297.</i>	

*In what cases generally, and how.]* When any persons, not being casual poor, become chargeable to a parish, the overseer, after relieving them, should examine into their place of settlement. His inquiries are of course at first made of the paupers themselves; and then of the masters, landlords, and others mentioned by them in their statement. If upon this inquiry it turn out that the paupers are settled in the parish or township to which they have become chargeable, the overseer, or relieving officer (if in a union) must continue to relieve them so long as they continue chargeable. But if the paupers appear to be settled in some other parish or township, and the overseer have obtained satisfactory evidence of it, he should take them before two magistrates of the county or borough in which his parish or township is situate, make his complaint that they have become chargeable to his parish and that their settlement is elsewhere, adduce the evidence to prove it, and obtain an order for their removal. Let duplicates be had of the order, one to serve, and the other to keep as evidence.

The overseer must then draw a notice of chargeability, directed to the churchwardens and overseers of the settlement parish, or to the overseers, if a township; and he must also draw a statement of the grounds of removal, and get them signed by a majority of the churchwardens and overseers, if a parish, or by a majority of the overseers, if a township. These, together with one of the duplicates of the order of removal, must be sent "by post or otherwise" to the churchwardens and overseers of the settlement parish, or to the overseers, if a township. And this should be done without delay; for the opposite parish will be liable for the costs of maintenance from such time only as the notice of chargeability shall have been sent; and in the case of a suspended order, the opposite parish will not be liable for costs of maintenance at all, unless such notice, duplicate, or copy of the order, and grounds of removal have been sent to them within ten days of such order being made. 4 & 5 W. 4, c. 76, s. 84.



The following may be the form of the notice of chargeability :—

*Parish of St. Mary, Beverly, in the East Riding of the county of York.*

*In the matter of John Noakes, a pauper.*

*To the churchwardens and overseers of the poor of the parish of Southcoates, in the said Riding.*

*Take notice that the above-named John Noakes, now residing at —, in this parish, has, together with Sarah his wife and their five children, become, and now is, chargeable to the said parish, and that an order of justices has been duly obtained for their removal to your parish of Southcoates, as their last place of legal settlement (a copy of which order, and also a statement of the grounds of removal, including the particulars of the settlement relied upon in support thereof, are herewith sent); and take notice, that unless notice of appeal against the said order be received by us within twenty-one days from the sending hereof, the said paupers will be removed to your said parish of Southcoates, in pursuance of the said order, and no appeal against the same can afterwards be allowed.*

And the statement of the grounds of removal may be added to it, thus :—*And take notice that the following are the grounds of the said removal, including the particulars of the settlement [or settlements] relied upon in support thereof;—* then stating the particulars of the settlement or settlements, exactly as in grounds of appeal, and adding a general ground as to chargeability, thus :—*And also, for that the said pauper hath come to inhabit and is now inhabiting in our said parish of —, not having gained a legal settlement there, nor having produced any certificate acknowledging him to be settled elsewhere, and that he is now actually chargeable to our said parish. Given under our hands, this — day of —, 1857.*

The pauper, however, cannot be removed until twenty-one days after the notice of chargeability, with a copy or counterpart of the order of removal, shall have been sent to the overseers of the opposite parish, unless such overseers agree to submit to the order (4 & 5 W. 4, c. 76, s. 79); and if within such period of twenty-one days a copy of the depositions shall be applied for, the pauper shall not be removed until after the expiration of a further period of fourteen days after the sending of such copy. 11 & 12 Vict. c. 31, s. 9.

If at the time of making the order, the pauper or any of his family mentioned in the order, is unable to travel, by reason

of sickness or other infirmity, or if it would be dangerous for him to do so,—upon proving this to the justices making the order, or to any other two justices of the same county, &c., they will suspend the execution of the warrant, and indorse such suspension on the order. And afterwards, if the party recover, and may be removed with safety, or if he die, and his family are to be removed, and this be represented to the same justices who suspended the order, or to any two justices of the same county, they will make another indorsement on the order, authorizing and directing the execution of it accordingly, and will order the overseers of the opposite parishes to pay the removing parish a certain sum for the charges incurred by the suspension. See *Arch. Poor Law*, 640–647.

The paupers are removed by the churchwardens and overseers of the removing parish, &c., or one of them, or by any proper person they may employ for the purpose. 54 G. 3, c. 170, s. 10. And they may be delivered to the churchwardens and overseers of the settlement parish to whom the order is directed, or to any one of them, who is compellable to receive them, under a penalty of 5*l.* 3 W. & M. c. 11, s. 10. Or, by stat. 9 & 10 Vict. c. 66, s. 7, they may be delivered, with the order, at the workhouse of the parish, or of the union to which the parish belongs, to any officer of such workhouse.

*In particular cases.]* A man cannot be removed from a parish, in which he has an estate, whether he reside upon the estate or not (*Arch. P. L.* 592); and this, even in the case of an estate purchased for a sum under 30*l.* 9 G. 1, c. 7, s. 5. But a man renting a tenement in the parish, may, if chargeable, be removed at any time, before he obtains a settlement by it. *R. v. Ampthill*, 2 B. & C. 847.

If a wife become chargeable in the absence of her husband, she may be removed to the place of his last legal settlement, if he have one, or if not, then to the place of her maiden settlement. *Arch. P. L.* 592. But where a wife is residing with her husband, and he has a settlement, she cannot be removed alone, so as to separate her from her husband, without the consent of both (*Id.* 593); nor can she be removed so as to separate her from him, without the consent of both, although he have no settlement. *R. v. Leeds*, 13 Law J. 107, *m.* And by stat. 9 & 10 Vict. c. 66, s. 1, it is provided, that whenever any person shall have a wife or children, having no other settlement than his or her own, such wife and children shall be removable whenever he or she [if then present in the parish] would be removable, and shall not be removable when he or she is not removable. See *Arch. P. L.* 594, 595.

No child, under the age of sixteen, whether legitimate or

illegitimate, residing in any parish with his or her father or mother, stepfather or stepmother, or reputed father, shall be removed, nor shall any order be granted for the removal of such child from such parish, in any case where such father, mother, stepfather, stepmother, or reputed father, may not lawfully be removed from such parish. 9 & 10 Vict. c. 66, s. 3; and see sect. 1, *supra*. And a child, under seven years of age, cannot be removed from its parent, under any circumstances. *Arch. P. L.* 596.

As to sick persons, it is enacted by stat. 9 & 10 Vict. c. 66, s. 4, that no order shall be granted for the removal of any person becoming chargeable in respect of relief made necessary by sickness or accident, unless the justices granting the order shall therein state that they are satisfied that the sickness or accident will produce permanent disability. And the overseer must produce evidence accordingly, at the time he applies for the order.

Servants may be removed, if chargeable. *Arch. P. L.* 598.

A girl pregnant of a bastard child, was formerly deemed actually chargeable, and might be removed. But this is no longer so. 4 & 5 W. 4, c. 76, s. 69.

Casual poor, we have seen (*ante*, p. 287), are not removable; but provision is made by stat. 11 & 12 Vict. c. 110, s. 2, for repaying to the parish the sums they shall expend in their relief.

Certificate-men, if they become chargeable, may be removed to the certifying parish; or if that be not their actual place of settlement, they may be removed either there or to their place of settlement. *Arch. P. L.* 601. And the removing parish shall be entitled to be reimbursed any expenses they may have incurred in their relief, by the parish to which they are removed. 3 G. 2, c. 29, s. 9.

As to convicts, vagrants, reputed thieves, &c.,—by stat. 35 G. 3, c. 101, s. 5, “every person who shall have been convicted of larceny, or any other felony,—or who by the laws now in being, shall be deemed a rogue, vagabond, idle or disorderly person,—or who shall appear to any two or more justices of the peace of the division wherein such person shall reside, upon the oath of one or more credible witness or witnesses, to be a person of evil fame, or a reputed thief, such person not being able to give a satisfactory account of himself or herself, or of his or her way of living,—shall be considered as a person actually chargeable, within the true intent and meaning of this Act, to the parish in which such person shall reside, and shall be liable to be removed to the parish of his or her last legal settlement, by the order of the said justices of the peace, whereof one to be of the quorum of the division where any such person shall reside.”

And lastly, by stat. 9 & 10 Vict. c. 66, s. 1, no person shall

be removed, nor shall any order be granted for the removal of any person, from any parish in which such person shall have resided for five years [continuously, without any break in such residence,]—not including therein the time during which such person shall be a prisoner in a prison,—or shall be serving Her Majesty as a soldier, marine, or sailor, or residing as in-pensioner in Greenwich or Chelsea hospitals,—or shall be confined in a lunatic asylum, or house duly licensed, or hospital registered for the reception of lunatics, or as a patient in an hospital,—or during which any such person shall receive relief from any parish, or shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bond fide* charitable gift. See *Arch. P. L.* 603–611.

As to an appeal against an order of removal, see *Arch. P. L.* 8th Ed. 768–848.

For the duties of the overseers in respect to the removal of Irish and Scotch paupers, see tit. “*Guardians of the Poor*,” p. 202.

*Their Duty as to the Poor Rate.*

1. *Making and Collecting the Rate*, p. 299.
2. *Levyng it*, p. 305.

1. *Duty of the Overseers in making the Rate.*

*On whom*, 299.

*How*, 300.

*New valuation of the rateable property*, 300.

*Form of the rate*, 301.

*Its allowance and publication*, 304.

*Inspection of it to be granted*, 304.

*Collection of it*, 304.

*On whom.*] By stat. 43 Eliz. c. 2, s. 1, the poor-rate is to be made on every inhabitant,—parson, vicar,—and on every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines or saleable underwoods, in the parish. As to the cases in which the owners of small tenements may be rated instead of the occupiers, see *post*, tit. “*Vestry*.” Formerly, inhabitants, that is to say, all persons residing within the parish or township, were rated there in respect of all visible personal property, locally situate within the parish, and producing profit. But by stat. 3 & 4 Vict. c. 80, (which is continued annually,) overseers are prohibited from taxing any inhabitant of a parish or township, as such inhabitant, “in respect of his ability, derived from the profits of stock in trade or any other property, for or towards the relief of the poor;” but this is not to affect the liability of any parson or vicar, or of any occupier of land, houses, tithes impropriate, propriations of tithes, coal mines or saleable underwoods.

The parson or vicar of a parish is liable to be rated to the poor for his parsonage or vicarage house, and for his glebe lands or any other real property, if in his occupation, in precisely the same way as other occupiers of land; they are also rateable for their tithes, as are also all impropriators of tithes in the parish. See *Arch. P. L.* 185. They and the occupiers of lands, houses, &c., in the parish, are now in fact the only ratepayers.

*How.]* The parties above mentioned are to be rated on an estimate of the net annual value of the several hereditaments which they occupy in the parish,—that is to say, at the rent the same might reasonably be expected to let at from year to year, (the tenant paying all the usual tenant's rates and taxes, and tithe commutation rent charge, if any,) deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent. 6 & 7 W. 4, c. 96, s. 1. As to the particular mode of rating the different species of property, see *Arch. P. L.* 142–200.

*New valuation of the rateable property.]* If a new valuation of the lands, &c., in the parish or part of it, become necessary, the poor law commissioners, on the application of the guardians of a union or parish, or of a majority of the churchwardens and overseers, may order a survey and valuation to be made accordingly. 6 & 7 W. 4, c. 96, ss. 3, 4. But a valuation of part only of the rateable property in a parish may be obtained by the guardians without an order of the poor law board. 11 & 12 Vict. c. 110, s. 7.

The following is the form of application:—

*By the Guardians.*

— Union.

— Parish.

*To the Poor Law Board.*

*The board of guardians of the — Union, in the count— of —, are of opinion, that a fair and correct estimate of the rateable property in the parish of —, for the purposes of the Act 6 & 7 W. 4, c. 96, commonly called the “Parochial Assessments Act,” cannot be made without a new valuation.*

*In witness whereof the common seal of the guardians was hereunto affixed, at a meeting of the board of guardians held on the — day of —, 185—, by —, chairman of the said meeting, in the presence of —,*

*—, Clerk of the Union.*

*By the Overseers.*

—— *Union.*

—— *Parish.*

*To the Poor Law Commissioners.*

*We, (the majority of) the churchwardens and overseers, competent to make and levy the rates for the relief of the poor of the parish of ——, are of opinion, that a fair and correct estimate of the rateable property in this parish, for the purposes of the Act 6 & 7 W. 4, c. 96, commonly called the "Parochial Assessments Act," cannot be made without a new valuation.*

*Dated this —— day of ——, 185—.*

*(Signed)*

*A. B. } Churchwardens.  
C. D. }*

*E. F. } Overseers.  
G. H. }*

*Form of the rate.] Every such rate shall, in addition to any other particular which the form of making out such rate shall require to be set forth, contain an account of every particular set forth at the head of the respective columns, in the form given by the Act, so far as the same can be ascertained; and the churchwardens and overseers or other officers whose duty it may be to make and levy the said rate, or such a number of the said churchwardens and overseers, or other officers as are competent to the making and levying of the same [that is to say, a majority of them], shall, before the rate is allowed by the justices, sign the declaration at the foot of the said form. 6 & 7 W. 4, c. 96, s. 2. If the declaration here mentioned be not made and signed, the rate shall be of no force or validity. Id. R. v. Fordham, 11 Ad. & El. 73.*

*The following is the form of the poor-rate, as given in the schedule to the statute :—*



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*County of Surrey, and for other purposes chargeable thereon according to Eight Hundred and Fifty-seven, after the rate of Sixpence in the pound.*

<i>Name or Situation of Property.</i>	<i>Estimated Extent.</i>	<i>Gross Estimated Rental.</i>	<i>Rateable Value.</i>	<i>Rate at 6d. in the Pound.</i>
	<i>A. R. P.</i>	<i>£ s. d.</i>	<i>£ s. d.</i>	<i>£ s. d.</i>
<b>Whiteacre</b>	<b>40 0 0</b>	<b>60 0 0</b>	<b>55 0 0</b>	<b>1 7 6</b>
<b>Farm.</b>				
<b>In West Street.</b>	<b>0 1 0</b>	<b>30 0 0</b>	<b>25 0 0</b>	<b>0 12 6</b>
<b>In Brick Lane.</b>	<b>- - -</b>	<b>1 10 0</b>	<b>1 5 0</b>	<b>0 0 7½</b>
<b>&amp;c.</b>	<b>&amp;c.</b>	<b>&amp;c.</b>	<b>&amp;c.</b>	<b>&amp;c.</b>

*declare the several Particulars specified in the respective columns of the above ascertain them, to which end we have used our best endeavours.*

**THOMAS JONES, Overseer.**  
**JOHN THOMAS, [Churchwarden, &c. &c.]**

**Poor Law Board to be kept, by their order of the 18th November, 1850:—**

[illegible]



By the order of the poor law commissioners, 17th March, 1847, the overseers are to provide rate books; and in every such rate book shall be inserted the particulars of the assessment and collection of the poor-rate of the parish, as set forth in the form numbered 1; and in addition to the declaration required by the Act passed in the 7th year of the reign of King William the Fourth, intituled "An Act to regulate Parochial Assessments," such overseers shall, before any rate is presented to the justices for their allowance, sign a declaration, in words at length, of the total amount of the rate so presented for allowance, according to the form in the last page.

*Its allowance and publication.*] After the rate is made and signed, it must be presented to two justices of peace of the county or borough, &c., in which the parish or township is situate, for their allowance, and they, as a matter of course, write their allowance at the foot of it, and sign it. This is a mere ministerial act on the part of the justices, in which they are not called upon to exercise their judgment, and they cannot refuse it. *Arch. P. L.* 204, 205.

On the Sunday next after the rate has been thus allowed, it must be published (17 G. 2, c. 3, s. 1),—that is to say, a notice of its having been made and published must be written out, and copies thereof, either in writing or in print, or partly in writing and partly in print, shall be affixed "on or near to the doors" of all the churches or chapels [of the church of England] within the parish or place, previously to divine service. 7 W. 4 & 1 Vict. c. 35, s. 2. See *Arch. P. L.* 205, 206. If this be not done, at the time here mentioned, the rate is altogether void, and cannot be enforced. 17 G. 2, c. 3, s. 1. *R. v. Newcomb*, 4 T. R. 368.

*Inspection of it to be granted.*] By stat. 6 & 7 W. 4, c. 96, s. 5, it shall be lawful for any person rated, at all reasonable times, to take copies of or extracts from the rate, without paying anything for the same; and in case the person having the custody of such rate, shall refuse to permit such person to take copies thereof or extracts therefrom, he shall forfeit and pay any sum not exceeding 5*l.*, to be recovered in a summary way before any justice of the peace having jurisdiction in the parish or place. Or an action may be maintained against him for a penalty of 20*l.*, by stat. 17 G. 2, c. 3. See *Arch. P. L.* 240.

*Collection of it.*] The rate must be collected by the overseers, or some or one of them; or by the assistant overseer, if one be appointed, and the collection of the rate be one of the duties assigned to him; or by the rate collector. See upon this subject, more particularly, *ante*, pp. 40–47.

**2. Duty of Overseers in Levying a Poor-rate.**

<i>In what cases,</i> 305.	<i>Tender of rate and costs,</i> 310.
<i>Rate demanded,</i> 305.	<i>How, where an appeal is pending,</i> 310.
<i>Complaint,</i> 305.	<i>How, in the case of rate-payers removing,</i> 311.
<i>Summons, &amp;c.,</i> 307.	<i>In what place the distress may be levied,</i> 312.
<i>Warrant of distress,</i> 307.	
<i>Costs,</i> 309.	
<i>Commitment in default of distress,</i> 309.	

*In what cases.]* By stat. 43 El. c. 2, s. 4, it shall be lawful as well for the present as subsequent churchwardens and overseers or any of them, by warrant from any two such justices of the county, &c., in which the parish is situate, to levy the said sums rated, and all arrearages of every one that shall refuse to contribute according as they shall be assessed, by distress and sale of the offender's goods, rendering to the parties the overplus; and in default of such distress, any two such justices of the peace may commit him or them to the common gaol of the county. See also sect. 13, to the same effect. And a churchwarden or overseer is as liable to be distrained upon for the amount of his rate, as any other person. *Skingley v. Surridge et al.*, 12 Law J. 122, m.

*Rate demanded.]* The rate must be demanded of the party. *R. v. Benn and Church*, 6 T. R. 198. And the exact sum legally due must be demanded, and the distress be for that sum and no more. *Hurrell v. Wink*, 8 Taunt. 369.

*Complaint.]* If the rate, when thus demanded, be not paid, the churchwardens and overseers, or any one of them, may make complaint thereof to a justice of the peace of the county, &c., and obtain a summons for the party and serve it.

The following may be the form of the complaint:—

*Complaint against one Ratepayer.*

— } *Be it remembered that on the — day of —, to wit. } in the year of our Lord —, the churchwardens and overseers of the poor of the parish of —, in the county of — aforesaid, by C. D., one of the said overseers, complain to the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county], that A. B., of the said [parish], being a person duly rated and assessed to the relief of the poor of the said parish, in and by a rate\* made on the — day of —, in the year —, in the sum of —, hath not paid the same or any part thereof, but hath refused so to do: wherefore the said churchwardens*

and overseers by C. D. aforesaid, pray that the said A. B. may be summoned to appear before two of Her Majesty's justices of the peace, to show cause why he hath not paid and refuses to pay the said sum. C. D.

Made and exhibited before me —, )  
at —, in the county of —, on )  
this — day of —, 1857. )  
E. F.

\*Or, in and by several rates made on —, and on —, in the several sums of —.

Complaint against several Ratepayers.

— } Be it remembered, that on the — day of —, to wit. } in the year of our Lord —, the churchwardens and overseers of the poor of the parish of —, in the [county] of — aforesaid, by C. D., one of the said overseers, complain to the undersigned, [one] of Her Majesty's justices of the peace in and for the said [county], that the several persons whose names are mentioned and set out in the schedule hereunder written, being persons duly rated and assessed to the relief of the poor of the said parish, in and by the rates in the said schedule mentioned, in certain sums set down opposite to their respective names in the said schedule, have not respectively paid the said sums or any part thereof, but have respectively refused so to do: wherefore the said churchwardens and overseers, by C. D. aforesaid, pray that the said several persons may respectively be summoned to appear before two of Her Majesty's justices of the peace, to show cause respectively why they have not paid and refuse to pay the said sums respectively.

SCHEDULE.

Names of the Ratepayers.	Residence.	Under Rate dated the —, 1850.	Arrears due under Rate dated the —, 1849.	Total Sum due.
A. B. - -	(here state	£ s. d.	£ s. d.	£ s. d.
I. K. - -	it)	1 7 0	1 7 0	2 14 0
L. M. - -	- - -	0 13 0	- - -	0 13 0
N. P. - -	- - -	- - -	0 18 6	0 18 6
		0 14 3	0 14 3	1 8 6

C. D.

Made and exhibited before me —, )  
at —, in the county of —, on )  
this — day of —, 1857. )  
E. F.

*Summons, &c.]* By stat. 12 & 13 Vict. c. 14, s. 5, every summons to be issued against any person for non-payment of any sum for which he or she is or shall be so rated or assessed as aforesaid, shall be directed to such person, and may be in the form (B.) in the schedule to this Act annexed, or in any form to the like effect;—and the same may be served by any churchwarden or overseer of the poor, or constable, or other person to whom it shall be delivered for that purpose, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him or her at his or her last place of abode; and the person who shall serve the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose if necessary to the service of the said summons.

*Warrant of distress.]* If the party summoned attend, but show no sufficient cause for non-payment of the rate, the justices will grant the distress warrant against him. And where the subscribers having shares in Putney bridge (99 in number), were rated for the bridge to the poor in the parish of St. Mary, Putney, and they did not appeal: and upon the subscribers being summoned to show cause why a distress warrant should not issue, it was prayed of the magistrate to grant a distress warrant for the whole against one of the subscribers named Cheeseman, who had hitherto paid the rate for the subscribers, but who lived in Middlesex: upon the magistrate refusing to do so, an application was made for a mandamus to compel him to grant a distress warrant, which the court granted, saying, that upon Cheeseman paying the whole rate, he would be entitled to contribution from the others. *R. v. Paynter*, 14 Law J. 179, *m.*; 7 Q. B. 255. *Paynter v. The Queen*, 16 Law J. 136, *m.*

Or if, upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then, and in every such case, if it be proved upon oath or affirmation to the justices then present that such summons was duly served as aforesaid a reasonable time before the time so appointed for his or her appearance as aforesaid, it shall be lawful for such justices of the peace in their discretion, if they shall so think fit, to proceed *ex parte*, in the same manner to all intents and purposes as if such party had personally appeared before them in obedience to the said summons. 12 & 13 Vict. c. 14, s. 5.

And by sect. 3, for the saving of expense in the levying of any sum or sums for rate and costs as aforesaid, it shall be lawful to make and issue one warrant of distress against any

number of persons neglecting or refusing to pay the same, in the form in the schedule to this Act annexed.

And by sect. 4, the warrant may be directed to the churchwardens and overseers of the poor, or the overseers of the poor, and to the constable of the parish or township, and to any other person or persons, or to any one or more of them, as by the justices granting the same shall be deemed fit.

As to the costs of the distress, where the amount does not exceed 20*l.*, see *Arch. J. P.*, vol. i. p. 429.

Formerly justices often refused to grant a distress warrant for a poor-rate, as it might possibly subject them to an action of trespass. Where a person was rated in the parish of A., for lands that were really situated in the parish of B., and being distrained upon, he brought an action of trespass against the justices who signed the distress warrant: the court held that the action well lay; for as the plaintiff had no rateable property in the parish, the justices had no jurisdiction to grant the distress warrant. *Weaver v. Price et al.*, 3 B. & Ad. 409. And for this reason it was, that the court of Queen's Bench formerly would not grant a mandamus to justices, commanding them to grant a distress warrant for a poor-rate, where there was any feasible doubt of the validity of the rate, or liability of the party. *R. v. Newcomb*, 4 T. R. 368. And *Arch. Cr. Off. Pr.* "Mandamus." Now, however, by a recent statute (6 & 7 Vict. c. 67, s. 3), "no action, suit, or any other proceeding shall be commenced or prosecuted against any person or persons whatsoever, for or by reason of anything done in obedience to any peremptory mandamus, issued by any court having authority to issue writs of mandamus." And by a still more recent Act, 11 & 12 Vict. c. 44, s. 5, "in all cases where a justice or justices of the peace shall refuse to do any act relating to the duties of his or their office as such justice or justices, it shall be lawful for the party requiring such act to be done, to apply to Her Majesty's court of Queen's Bench, upon an affidavit of the facts, for a rule calling upon such justice or justices, and also the party to be affected by such act, to show cause why such act should not be done; and if after due service of such rule good cause shall not be shown against it, the said court may make the same absolute, with or without or on payment of costs, as to them shall seem meet; and the said justice or justices, upon being served with such rule absolute, shall obey the same, and shall do the act required; and no action or proceeding whatsoever shall be commenced or prosecuted against such justice or justices for having obeyed such rule, and done such act so thereby required as aforesaid." And lastly, by the 4th section of the same Act, "where any poor-rate shall be made, allowed, and published, and a warrant of distress shall issue against any person named and rated therein, no

action shall be brought against the justice or justices who shall have granted such warrant, by reason of any irregularity or defect in the said rate, or by reason of such person not being liable to be rated therein."

*Costs.*] By stat. 12 & 13 Vict. c. 14, s. 1, justices of the peace, if in their discretion they shall so think fit, may in any warrant of distress they shall make and issue for the levying of any sum or sums to which any person or persons is or are now or may hereafter be rated or assessed in or by any rate or assessment for the relief of the poor, or in any warrant for the levying of any arrears of the same, order that a sum, such as they may deem reasonable, for the costs and expenses which such overseers shall have incurred in obtaining the same, shall also be levied of the goods and chattels of the person or persons against whom such warrant shall be granted, together with the reasonable charges of the taking, keeping, and selling of the said distress.

And by sect. 7, in all cases where such costs and expenses as aforesaid shall have been paid and received, or any proceedings taken or imprisonment had for non-payment of the same, such payment and receipt, and such proceedings or imprisonment, shall be deemed legal to all intents and purposes, and no action or other proceedings shall be had or proceeded in for or in respect of the same.

*Commitment in default of distress.*] By stat. 12 & 13 Vict. c. 14, s. 2, when to any warrant of distress for the levying of any sum or sums to which any person or persons is or are now or may hereafter be rated or assessed in or by any rate or assessment hereinbefore mentioned, it shall be returned by the constable or person having the execution of such warrant that he could find no goods or chattels, or no sufficient goods or chattels, whereon to levy such sum or sums, together with the costs of or occasioned by the levying of the same, it shall be lawful for any two or more justices of the peace before whom the same shall be returned, or for any two or more justices of the peace for the same county, riding, division, liberty, city, borough, or place, if in their discretion they shall so think fit, to issue their warrant of commitment against the person with relation to whom such return shall be so made as aforesaid, in the form (D.) in the schedule to this Act annexed, or in any form to the like effect, and thereby order such person to be imprisoned in the common gaol or house of correction for any time not exceeding three calendar months, unless the sum or sums therein mentioned shall be sooner paid; and every such warrant of commitment, made or issued for default of distress as aforesaid, shall be made as well for the non-payment of the costs and expenses so as aforesaid incurred in

obtaining such warrant of distress, if the same shall be so ordered as aforesaid, and the costs attending the said distress, and also the costs and charges of taking and conveying the party to prison (the amount of such several costs, expenses, and charges being stated in such warrant of commitment), as for the non-payment of the sum or sums alleged to be due for the said rates.

But nothing herein shall be deemed or construed to authorize justices to grant or issue one warrant of commitment against several persons in default of distress. *Id.* s. 3.

*Tender of rate and costs.]* By stat. 12 & 13 Vict. c. 14, s. 6, in all cases where any proceedings have been or shall hereafter be taken to compel payment of any sum for which any such person is or shall be so rated or assessed as aforesaid, if at any time before such person shall be committed to and lodged in prison for non-payment thereof, or for or by reason of its being returned to such warrant of distress as aforesaid that there are no goods or chattels or no sufficient goods or chattels of such person whereon the same may be levied as aforesaid, such person shall pay or tender to the churchwardens or overseers of the poor, or any of them, or other person authorized to collect or receive such rate, the sum so sought to be recovered, together with the amount of all costs and expenses up to that time incurred in the proceedings so taken to compel payment thereof, as aforesaid, then and in every such case the person to whom such sum and costs shall be so paid or tendered shall receive the same, and thereupon no further proceedings for the recovery of the same shall be had or taken.

As to the costs of the distress where the amount does not exceed 20*l.*, see *Arch. J. P.*, vol. i. 5th Ed. 403.

*How, where an appeal is pending.]* By stat. 41 G. 3, c. 23, s. 2, every sum of money at which any person shall be rated or assessed, in any rate or assessment made for the relief of the poor of any parish, township, vill, or place, shall and may be levied and recovered by distress, and all other lawful ways and means, notwithstanding the person so rated or assessed, or any other person or persons, shall have given notice of appeal from or against such rate or assessment, for any cause whatsoever: provided always, that if any person rated or assessed in any such rate or assessment, shall give such notice of appeal, then, from and after the giving of such notice, and until the appeal shall have been heard and determined, no proceedings shall be commenced or carried on to recover any greater sum of money from such person, than the sum at which he, or any occupier of the same premises, shall have been rated

or assessed in the last effective rate which shall have been collected in such parish, township, vill, or place.

And in case the said court of general or quarter sessions of the peace shall, upon appeal, order any such rate or assessment to be quashed, the said court may order any sum of money, in and by such rate or assessment charged on any person, or any part of any such sum, not to be paid, and then and in every such case no proceedings shall, after making such order, be commenced; or if any proceedings shall have been previously commenced, such proceedings shall be no further prosecuted or carried on for the purpose of levying or enforcing the payment of any sum which shall be so ordered by the said court not to be paid as aforesaid: provided always, that no justice of the peace, constable, or other officer of the peace, or other person, shall be deemed a trespasser, or liable to any action, for any warrant, order, act, or thing, which such justice, constable, or other officer or person shall have granted, made, executed, or done, for the purpose of levying or enforcing the payment of any such sum or sums of money, before he shall have had notice in writing of the order for the non-payment of such sum or sums of money, which the said court is hereby authorized to make as aforesaid. *Id.* s. 3.

Or, if upon the hearing of any such appeal, the court of general or quarter sessions shall order the name of any person to be struck out of such rate or assessment, or the sum rated or assessed on any person to be decreased or lowered; and if it shall be made appear to the said court that such person hath, previously to the hearing of such appeal, paid any sum of money, in consequence of such rate or assessment, which he ought not to have paid or been charged with, then the said court shall order every such sum of money to be repaid and returned by the said churchwardens and overseers of the poor, to the person having paid the same, together with all reasonable costs, charges, and expenses, occasioned by such person having paid or been required to pay the same; and every sum so ordered to be repaid or returned, shall and may, together with all such costs, charges, and expenses as aforesaid, be levied and recovered from them, or any of them, by distress, and all such other ways and means as the money charged, rated, or assessed on any person, by any rate or assessment made for the relief of the poor, can or may be by law levied or recovered. *Id.* s. 8.

*How, in the case of ratepayers removing.]* By stat. 17 G. 2, c. 38, s. 12, after reciting that "persons frequently remove out of parishes and places without paying the rates assessed upon them, and other persons do enter and occupy their houses and tenements part of the year, by reason



whereof great sums are annually lost to such parishes and places :” it is enacted, “that where any person or persons shall come into, or occupy any house, land, tenement, or hereditament, or other premises, out of or from which any other person assessed shall be removed, or which at the time of making such rate was empty or unoccupied, that then every person so removing from, and every person so coming into or occupying the same, shall be liable to pay such rate in proportion to the time that such person occupied the same respectively, in the same manner, and under the like penalty of distress, as if such person so removing had not removed, or such person so coming in or occupying, had been originally rated and assessed in such rate ; which said proportion, in case of dispute, shall be ascertained by any two or more of His Majesty’s justices of the peace.”

*In what place the distress may be levied.*] By stat. 17 G. 2, c. 38, s. 7, for the more effectual levying money assessed for the relief of the poor, it is enacted, that the goods of any person assessed, and refusing to pay, may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found within the said county or precinct, on oath made thereof before some justice of any other county or precinct (which oath shall be certified under the hand of such justice on the said warrant), such goods may be levied in such other county or precinct, by virtue of such warrant and certificate ; and if any person shall find him or herself aggrieved by such distress as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter sessions of the peace for the county or precinct where such assessment was made, and the justices there are hereby required to hear and finally determine the same.

And by stat. 54 G. 3, c. 170, s. 12, it is also enacted, that the goods and chattels of any person neglecting or refusing to pay any sum of money legally assessed on and due from him, in respect of any rate for the relief of the poor, church cess, or highway cess, of any district, parish, township, or hamlet, for the space of seven days after the same shall have been legally demanded of him, shall and may be distrained, not only within such district, parish, township, or hamlet, but also within any other district, parish, township, or hamlet, within the same county, riding, division, or jurisdiction ; and if sufficient distress cannot be found within the same county, riding, division, or jurisdiction, then, upon oath thereof made before any one or more justice or justices of the peace of any other county, riding, division, or jurisdiction, in which any of the goods or chattels of such persons shall be found (which

or assessed in the last effective rate which shall have been collected in such parish, township, vill, or place.

And in case the said court of general or quarter sessions of the peace shall, upon appeal, order any such rate or assessment to be quashed, the said court may order any sum of money, in and by such rate or assessment charged on any person, or any part of any such sum, not to be paid, and then and in every such case no proceedings shall, after making such order, be commenced; or if any proceedings shall have been previously commenced, such proceedings shall be no further prosecuted or carried on for the purpose of levying or enforcing the payment of any sum which shall be so ordered by the said court not to be paid as aforesaid: provided always, that no justice of the peace, constable, or other officer of the peace, or other person, shall be deemed a trespasser, or liable to any action, for any warrant, order, act, or thing, which such justice, constable, or other officer or person shall have granted, made, executed, or done, for the purpose of levying or enforcing the payment of any such sum or sums of money, before he shall have had notice in writing of the order for the non-payment of such sum or sums of money, which the said court is hereby authorized to make as aforesaid. *Id.* s. 3.

Or, if upon the hearing of any such appeal, the court of general or quarter sessions shall order the name of any person to be struck out of such rate or assessment, or the sum rated or assessed on any person to be decreased or lowered; and if it shall be made appear to the said court that such person hath, previously to the hearing of such appeal, paid any sum of money, in consequence of such rate or assessment, which he ought not to have paid or been charged with, then the said court shall order every such sum of money to be repaid and returned by the said churchwardens and overseers of the poor, to the person having paid the same, together with all reasonable costs, charges, and expenses, occasioned by such person having paid or been required to pay the same; and every sum so ordered to be repaid or returned, shall and may, together with all such costs, charges, and expenses as aforesaid, be levied and recovered from them, or any of them, by distress, and all such other ways and means as the money charged, rated, or assessed on any person, by any rate or assessment made for the relief of the poor, can or may be by law levied or recovered. *Id.* s. 8.

*How, in the case of ratepayers removing.]* By stat. 17 G. 2, c. 38, s. 12, after reciting that "persons frequently remove out of parishes and places without paying the rates assessed upon them, and other persons do enter and occupy their houses and tenements part of the year, by reason

for it. For this purpose, the child must be brought before two justices for the county, &c., and the overseers should be prepared to satisfy the justices as to the fitness of the person to whom it is intended to bind the child, his residence and place of business; and the father or mother of the child, if living, should also attend, in order that the justices may examine him or her if necessary. See 56 G. 3, c. 139, s. 1. *Arch. P. L.* 444, 445. The justices may then make an order, authorizing the overseers to bind the child apprentice; and the indenture is accordingly prepared. See *Arch. P. L.* 445.

Before the indenture is executed by any of the parties, it must be allowed by the two justices who made the order. 56 G. 3, c. 139, s. 1. And if the child is to be apprenticed into a different parish, notice must be given to the overseers of that parish, of the intended application to the justices to allow the indenture; and if at the time mentioned such overseers or one of them do not attend, and affidavit be made of the service of the notice,—or if they or one of them attend, and show no sufficient cause against the binding, then the justices write their allowance upon the indenture, and sign and seal it. See 56 G. 3, c. 139, s. 2. *Arch. P. L.* 450. But if the child is to be bound into a different county and parish, then not only the notice to the overseers of the other parish must be given, as above mentioned, but the indenture must be allowed by two justices of each county. 56 G. 3, c. 139, s. 2. *Arch. P. L.* 449. The allowance being written, signed, and sealed, the indenture is then executed by a majority of the churchwardens and overseers, as the binding parties, and by the master; in indentures by overseers, the child is not a party. *Arch. P. L.* 447.

So, in all cases of indentures of apprenticeship, “by reason of which any expense whatever shall be incurred by the public parochial funds,” they must be approved of by two justices of the peace, under their hands and seals, in the manner above mentioned; otherwise they will be void. 56 G. 3, c. 139, s. 11.

By the order of 29th January, 1845, the poor law commissioners directed that whenever any justice or justices shall, under any authority of law, assent or consent, order or allow of the binding of any poor child as apprentice, such justice or justices shall certify at the foot of the indenture and the counterpart thereof, in the form and manner following; that is to say,—

“I, or we, (as the case may be), justice or justices of the peace, of and in the county of ——— who have assented to, ordered or allowed the above binding, do hereby certify that we have examined and ascertained that the rules, orders, and regulations of the poor law commissioners, for the binding of

poor children apprentices, and applicable to the above-named parish, contained in the general order, bearing date the 20th day of January, 1845, have been complied with.

“ Signed this — day of —.

“ — Signature.”

*Apprentices to the sea service.*] By stat. 17 & 18 Vict. c. 104 (The Merchant Shipping Act, 1854), sect. 141, all shipping masters appointed under this Act shall, if applied to for the purpose, give to any board of guardians, overseers, or other persons desirous of apprenticing boys to the sea service, and to masters and owners of ships requiring apprentices, such assistance as is in their power for facilitating the making of such apprenticeships, and may receive from persons availing themselves of such assistance such fees as may be determined in that behalf by the board of trade, with the concurrence, so far as relates to pauper apprentices in England, of the poor law board in England, and so far as relates to pauper apprentices in Ireland, of the poor law commissioners in Ireland.

In the case of every boy bound apprentice to the sea service by any guardians or overseers of the poor, or other persons having the authority of guardians of the poor, the indentures shall be executed by the boy and the person to whom he is bound in the presence of and shall be attested by two justices of the peace, who shall ascertain that the boy has consented to be bound, and has attained the age of twelve years, and is of sufficient health and strength, and that the master to whom the boy is to be bound is a proper person for the purpose. *Id.* s. 142. And all indentures of apprenticeship to the sea service shall be exempt from stamp duty; and all such indentures shall be in duplicate; and every person to whom any boy whatever is bound as an apprentice to the sea service in the United Kingdom shall within seven days after the execution of the indentures take or transmit the same to the registrar general of seamen, or to some shipping master; and the said registrar or shipping master shall retain and record one copy, and shall endorse on the other that the same has been recorded, and shall re-deliver the same to the master of the apprentice; and whenever any such indenture is assigned or cancelled, and whenever any such apprentice dies or deserts, the master of the apprentice shall, within seven days after such assignment, cancellation, death, or desertion, if the same happens within the United Kingdom, or if the same happens elsewhere, so soon afterwards as circumstances permit, notify the same either to the said registrar of seamen, or to some shipping master, to be recorded; and every person who fails to comply with the provisions of this section shall incur a penalty not exceeding 10*l.* *Id.* s. 143.

Subject to the provisions hereinbefore contained, all ap-

prenticeships to the sea service made by any guardians or overseers of the poor, shall be made in the same manner, and be subject to the same laws and regulations, as other apprenticeships made by the same persons. *Id.* s. 144.

And the master of every foreign ship shall, before carrying any apprentice to sea from any place in the United Kingdom, cause such apprentice to appear before the shipping master before whom the crew is engaged, and shall produce to him the indenture by which such apprentice is bound, and the assignment or assignments thereof (if any); and the name of such apprentice, with the date of the indenture and of the assignment or assignments thereof (if any), and the name of the port or ports at which the same have been registered, shall be entered on the agreement; and for any default in obeying the provisions of this section the master shall for each offence incur a penalty not exceeding 5*l.* *Id.* s. 145.

*Beer-house.*] By stat. 3 & 4 Vict. c. 61, s. 2, where a person applies to be licensed to retail beer or cider, he shall produce to the proper officer of excise a certificate in writing from an overseer of the township, parish, or place in which he shall reside, certifying that such applicant is the real resident, holder, and occupier of the house for which he requires the licence, and also certifying the true rent or annual value, at which such house, with the premises occupied therewith, is rated in one rating to the poor rates, according to the last sum or rate made and allowed in such township, parish, or place for the relief of the poor.

And by sect. 5, every overseer of the poor, who shall refuse to grant a certificate of the rating or assessment of any rated house and premises, when demanded, or of any person having claim to be rated in respect of any newly created house not yet rated,—or who shall falsely certify any house to be rated when the same was not duly rated at the time of the making and allowance of the last rate made and allowed for the relief of the poor,—and every overseer or other person who shall falsely certify any person to be the real resident, holder, and occupier of any house, contrary to the fact,—or falsely certify the rent or annual value at which any dwelling-house and premises shall now or will be rated, or the rent paid for the same, or the annual value thereof,—or shall grant any certificate which shall in any other respect be wilfully false,—shall forfeit twenty pounds.

*Borough or county rate.*] In all cases where a borough rate or watch rate may be made and levied in any borough, the council of such borough may order the churchwardens and overseers of every parish or place within which such rate may be levied, or such other persons as by law may make a poor

rate for any such parish or place within the limits of such borough, to pay the amount of such part and portion of such rate for which such parish or place respectively shall be liable, out of the poor rate made and collected or to be made or collected for such parish or place ; or the said council, instead of ordering such churchwardens and overseers or other persons to pay the same out of the poor rate, may order them to make and collect a certain pound rate upon and from the occupiers or possessors of all rateable property within such parish or place, for the amount of the rate for which such parish or place may be liable as aforesaid ; and if such churchwardens, overseers, and other persons, upon being so ordered to pay such rate out of the poor rate, or to make and collect a pound rate as aforesaid, shall refuse or neglect to do so, the amount thereof may be made and levied of the goods of them or any of them by distress, by virtue of a warrant in that behalf under the hand and seal of the mayor of such borough, or of any two justices of the peace in and for the same. 1 Vict. c. 81, s. 1.

As to the mode of proceeding, where part only of a parish is within a borough, see stat. 15 & 16 Vict. c. 81, s. 32.

As to the county rate :—By stat. 15 & 16 Vict. c. 81, s. 2, the justices at quarter sessions may from time to time appoint a committee of justices to prepare a basis or standard for a fair and equal county rate, according to the full and fair annual value of the property rateable to the relief of the poor in every parish, &c., within the limits of their commission ;—that is to say, according to the net annual value at which such property is estimated, for the purpose of assessing the poor rate. *Id.* s. 6. And such committee may direct the overseers of the poor, and all others having the custody or management of any parochial rates or valuations of any such parish, to make returns of the amount of all such property within their respective parishes, &c., and the date of the last valuation ; and the overseers, before they present the same to the committee, shall lay the same before a vestry meeting of the parish, &c. *Id.* s. 5. So the said committee may from time to time order the overseers to attend before them, and to produce all parochial and other rates, valuations, &c., in their custody or power relating to the value or assessment of all property within the several parishes, &c., and to be examined upon oath (*Id.* s. 7) ; and if they neglect or refuse to appear, or to be sworn or examined, or to produce the documents required of them, they shall forfeit the sum of twenty pounds (*Id.* s. 8) ; or if they neglect to make the returns above mentioned, the full expense of the committee in ascertaining the value of the rateable property in the parish, &c., shall be charged upon such parish, &c., to be levied in the same manner as a county rate. *Id.* s. 10. So, where the committee order a new valuation of a parish, &c., they may order the overseers to pay the expenses of it, to

be levied, &c., in the same manner as the county rate. *Id.* s. 11. The committee may make such allowance and compensation to overseers, as to them shall seem reasonable, out of the county stock. *Id.* s. 12.

As soon as the committee shall have prepared the basis or standard of a county rate, in which the property in any parish or place is estimated at a greater or less amount than in the last preceding basis or standard, they shall send copies thereof to the overseers of each parish, &c., with a notice of the time within which objections may be made to it; and the overseers within twenty-one days after the receipt thereof, shall call a vestry meeting, and lay such copy before the meeting. *Id.* ss. 13, 14. Against this basis or standard any overseer of the poor or other person having the collection or levy of the county rate, or any inhabitant of a parish, &c., may appeal to the quarter sessions, giving due notice of appeal. *Id.* s. 17.

According to this basis or standard, the justices at quarter sessions may afterwards make a county rate, assessing each parish, &c., according to a certain pound rate (*Id.* s. 21); against which the overseers or any inhabitant of such parish may appeal. *Id.* ss. 22–25. A precept shall be sent to the guardians of each union in the county, [or to the overseers of parishes not in unions, s. 30], stating the sums at which each parish in the union is rated, and requiring the same to be paid to the treasurer of the county (*Id.* s. 26); and in case the guardians do not pay on behalf of any parish, a warrant may be sent to the overseers of such parish to levy the amount, and pay it to the county treasurer; and if they fail to do so, the same may be levied by distress and sale of the goods of such overseers. *Id.* ss. 27, 28.

*Burying dead bodies.*] If any person shall find a dead body or bodies cast on shore from the sea by wreck or otherwise, he shall within six hours give notice thereof to one of the churchwardens or overseers of the parish where the body shall be found, or (if it be found in an extra-parochial place) to the constable or headborough, or cause such notice to be left at his last place of abode: if he do this, he shall have a reward of 5s. (48 G. 3, c. 75, s. 3), to be paid to him by such churchwarden, &c. (*Id.* s. 5); or if he do not, he shall forfeit 5*l.* *Id.* s. 4.

Upon notice being so given to the churchwarden, overseer, or constable, &c., he shall cause the body to be forthwith removed to some convenient place, and with all convenient speed cause it to be decently interred in the churchyard or burial ground of such parish or place. *Id.* s. 1. And if he refuse or neglect to have such body removed to some convenient place prior to interment, for twelve hours after notice so given to or left for him, or shall neglect or refuse to perform

the other duties required of him by this Act, he shall forfeit the sum of 5*l.* *Id.* s. 7. The statute gives an appeal. *Id.* s. 10.

All necessary expenses incurred in the execution of this Act, shall be paid in the first instance by the churchwardens or overseers, or constable or headborough, of the parish or place (*Id.* s. 5); who shall be afterwards reimbursed by an order of any one justice of the peace upon the treasurer of the county, &c. (*Id.* s. 6), to be paid out of the county rate. *Id.* s. 14.

In other cases, also, the guardians, or, where there are no guardians, the overseers, may cause the dead body of any poor person, which may be within their union or parish, to be buried, and charge the expense thereof to the parish to which such poor person was chargeable. 7 & 8 Vict. c. 101, s. 31.

*Constables' list.*] Overseers we have seen (*ante*, p. 52), upon the receipt of the justices' precept, must call a vestry meeting, to make out a list of all persons in their parish or township qualified and liable to serve as constables; and shall affix a copy of such list on the principal door of each church and chapel in their district, and return the original to the justices; and they shall afterwards attend at the special sessions holden for the appointment of constables, to verify the list, and to answer such questions as may be put to them.

*Disorderly houses, gaming houses, &c.*] We have seen (*ante*, p. 52), that if two inhabitants of a parish give notice to a constable and the overseers, of any person keeping a bawdy-house, gaming-house, or any other disorderly house in such parish, the constable shall go with such two inhabitants before a justice of the peace, and upon the two inhabitants verifying the contents of the notice on oath, and entering into a recognizance to give evidence, the constable shall enter into a recognizance to prosecute; or the overseers may attend, and enter into the latter recognizance, in which case the prosecution shall be carried on by them. And upon conviction of the party indicted, the overseers are compellable to pay each of the two inhabitants 10*l.*

As to their prosecuting masters for offences against their apprentices or servants, see *ante*, p. 202.

*Gaol passes.*] By stat. 5 G. 4, c. 85, for more effectually providing prisoners, upon their discharge, with the means of proceeding to their place of settlement, the visiting justices are authorized to furnish them with passes, in manner following:—The justices at sessions shall cause blank printed forms of passes, in the form given by the statute, to be issued to the keepers of the different prisons within their jurisdiction; and when a prisoner is desirous to have the means of returning to his place of settlement, any two visiting justices, after examining him on his oath as to his settlement, and upon such



further evidence as can be procured, shall, if they deem it expedient, fill up one of the printed forms of passes, and give it the prisoner, entitling him to a sum not exceeding  $1\frac{1}{2}d.$  per mile for himself, and  $1d.$  for each of his children who have been in prison with him, by reason of their being in a state of nurture or without other protection. Sects. 22, 23. And the overseer of the poor of such place through which he shall pass, shall pay him the sum specified in the pass for the number of miles to the next town or place, and shall indorse the same on the pass, and take the party's receipt (*Id.* s. 24): and he shall be reimbursed by the treasurer of the county. *Id.* s. 25. And at the last place of receiving this allowance, the party shall deliver up the pass to the overseer, who shall thereupon transmit the same by post, under cover, indorsed "Pass of a discharged prisoner," to the keeper of the prison from which the party was discharged. *Id.* s. 26.

*Guardians, list of voters for.*] The churchwardens and overseers of parishes in unions, shall enter in some book to be from time to time provided for that purpose, the names and addresses of the owners and proxies who shall send statements of their claims to vote, and the assessment of the poor rate on the property in respect whereof they respectively claim to vote. *Ord. P. L. C. 22nd April, 1842, Art. 5, s. 4.* This book may be kept according to the form annexed to the order.

*Jury lists.*] By stat. 6 G. 4, c. 50, s. 1, every man between the ages of twenty-one and sixty, residing in any county in England, who shall have in his own name or in trust for him, within the same county,  $10l.$  by the year above reprises in lands or tenements, whether of freehold, copyhold or customary tenure, or of ancient demesne, or in rents issuing out of any such lands or tenements, or in such lands, tenements, and rents, taken together, in fee-simple, fee-tail, or for the life of himself or some other person; or who shall have within the same county  $20l.$  above reprises in lands or tenements, held by lease for an absolute term of twenty-one years or more, or for any term of years determinable on any life or lives; or who being a householder shall be rated or assessed to the poor rate, in Middlesex, on a value not less than  $30l.$ , or in any other county on a value not less than  $20l.$ ; or who shall occupy a house containing not less than fifteen windows,—shall be qualified and liable to serve on grand juries in courts of sessions of the peace, and on petty juries for the trial of all issues joined in such courts of sessions of the peace, and triable in the county, riding, or division in which every man so qualified respectively shall reside. 6 G. 4, c. 50, s. 1. In Wales, the qualification is three-fifths of the qualifications above mentioned. *Id.*

Peers however are exempt from serving on juries ; so are the judges of the courts of record at Westminster ; clergyman in holy orders ; priests of the Roman catholic faith, who have taken and subscribed the oaths and declarations required by law ; persons who teach or preach in a congregation of protestant dissenters, whose place of meeting is registered, and who follow no secular occupation, except that of schoolmaster, producing a certificate of some justice of the peace of their having taken the oaths and subscribed the declaration required by law ; serjeants and barristers-at-law actually practising ; members of the society of doctors-at-law, and advocates of the civil law actually practising ; attorneys, solicitors, and proctors actually practising, and having duly taken out their annual certificates ; officers of the courts of law and equity, and of the ecclesiastical and admiralty courts ; coroners, gaolers, and keepers of houses of correction ; members and licentiates of the royal college of physicians in London, actually practising ; surgeons, being members of the royal college of surgeons in London, Dublin, or Edinburgh, and actually practising ; apothecaries certificated by the apothecaries' company, and actually practising ; officers of the navy or army on full pay ; pilots licensed by the Trinity House of Deptford, Hull, or Newcastle-upon-Tyne, and masters in the buoy or light service of these corporations ; and pilots licensed by the lord-warden of the cinque ports, or by statute or charter in any other port ; household servants of Her Majesty ; officers of custom or excise ; sheriffs' officers, high constables, and parish clerks. 6 G. 4, c. 50, s. 2.

In the first week of July of every year, the clerk of the peace in every county shall issue his warrant to the high constables, commanding them to issue their precepts to the churchwardens and overseers of the poor of the several parishes, and to the overseers of the poor of the several townships, within their respective constablewicks, requiring them to return a list of all men residing within their parishes, &c., qualified and liable to serve on juries. 6 G. 4, c. 50, s. 4. The high constables make out their precepts accordingly (*Id.* s. 6) ; and the churchwardens and overseers make out the lists (*Id.* s. 8), and fix a copy on the church door on the three first Sundays in September. *Id.* s. 9. And the justices of the peace of any division in England or Wales, at a special petty sessions to be holden for that purpose before the first day of July in any year, may make an order for annexing any extra-parochial place, whenever they shall think it expedient, to any parish or township adjoining thereto, for the purposes of this Act, and a copy of such order shall, within five days from the making thereof, be served upon the churchwardens and overseers of such adjoining parish, or upon the overseers of such adjoining township, and such churchwardens and

overseers, or overseers, shall make out, according to this Act, a true list of all men qualified and liable to serve on juries as aforesaid, residing as well in their own respective parish or township as in the extra-parochial place thereto annexed, and shall act within such extra-parochial place, for the purposes of this Act, as in their own respective parish or township. *Id.* s. 7. *The forms of the warrant, precept, and lists, are given in the schedule to the Act.*

And if any churchwarden or overseer of any parish, or any overseer of any township, shall refuse or neglect (unless prevented by sickness) to assist in making out any list required by this Act, so that the same shall not be made out at the time and in the manner hereinbefore directed;—or shall wilfully omit out of such list any man whose name ought to be inserted therein, or shall wilfully insert therein the name of any man who ought to be omitted; or shall take any money or other reward for omitting or inserting any man whatsoever; or shall wilfully insert therein a wrong description of the name, place of abode, title, quality, calling, business, or the nature of the qualification of any man; or shall refuse or neglect, in case the number of forms of return delivered by the high constable shall be insufficient, to apply to the high constable for a sufficient number, so that the list may be made out at the time and in the manner hereinbefore directed; or shall refuse or neglect to fix a copy of such list duly signed, or to subjoin thereto such notice as herein required, on the principal door of any church, chapel, or other public place of religious worship within their respective parishes or townships, on any of the Sundays on which the same ought to be so fixed; or shall refuse to allow any inhabitant of their respective parishes or townships to inspect such list, or a true copy thereof, gratis, at any reasonable time during the three weeks herein mentioned; or shall, on due notice, refuse or neglect to produce such list at such petty sessions as aforesaid, or to answer on oath such questions touching the same as shall there be put, or to attend at such petty sessions, or any such adjournment thereof as aforesaid; or shall refuse to allow the said petty sessions, or any justice of the peace, upon due request, to inspect or make any extracts from the poor rate of any parish or township within their respective divisions, for the purpose hereinbefore mentioned, such rate being in the custody of the party so refusing:—penalty not exceeding ten pounds nor less than forty shillings; and the justice before whom such offender shall be convicted of any such offence of wrongful insertion or omission, shall forthwith, in writing under his hand, certify the same to the clerk of the peace of the county, riding, or division in which the man or men so wrongfully omitted or inserted shall reside, and the said clerk of the peace shall cause the list in which such wrongful inser-

tion or omission shall have occurred to be corrected according to such certificates, and shall also give notice thereof to the sheriff or under-sheriff, who shall correct the jurors' book accordingly. *Id.* s. 45.

*Lunatics.*] As to the duties of overseers in respect to pauper lunatics and lunatics found wandering at large, see tit. "*Guardians of the Poor*," pp. 167, 180.

*Registration of parliamentary voters for counties.*] Overseers of the poor have certain duties assigned to them in preparing the annual registration of the several persons in their parish or township, entitled to vote in the election of members of parliament. The clerk of the peace of the county, on or before the 10th of June in each year, sends to the overseers of each parish and township within the county, a precept, detailing these duties, and instructing them as to the manner in which they are to be performed. At the same time he sends them a sufficient number of printed forms of—Notices to claimants,—Lists of claimants,—Lists of persons objected to,—Copies of such part of the register of voters then in force for such county, as shall relate to such parish or township,—and a Table of rates of payment to be demanded and paid for any list or copy of a list, where payment is required or authorized by the statute.

On or before the 20th June in every year, the overseers of the poor of every parish shall publish a notice to claimants, having first signed the same, requiring all persons entitled to vote in the election of a knight or knights of the shire to serve in parliament in respect of any property situated wholly or in part within such parish or township who shall not be upon the register of voters then in force, and also all persons so entitled as aforesaid, who being upon such register shall not retain the same qualification or continue in the same place of abode as described in such register, and who are desirous to have their names inserted in the register about to be made, to give or send to the said overseers, on or before the twentieth day of July then next ensuing, a notice in writing by them signed, of their claim to vote as aforesaid; and every such person, and any person who being upon such register may be desirous to make a new claim, shall, on or before the said twentieth day of July, deliver or send to the said overseers a notice signed by him, according to the form set forth at the foot of such notice to claimants, or to the like effect. The mode in which this notice is to be published, is stated in the precept above mentioned. 6 Vict. c. 18, s. 4; and see ss. 27–33.

On or before the last day of July in every year, the overseers shall make out a list of claimants, according to the form sent

them by the clerk of the peace, which shall contain a list of all persons, who, on or before the twentieth July then next preceding, shall have claimed as aforesaid ; and in every such list the christian name and surname of every claimant, with the place of his abode, the nature of his qualification, and the local or other description of the property, and the name of the occupying tenant thereof, shall be written as the same are stated in the claim ; and the said overseers, if they shall have reasonable cause to believe that any person whose name shall appear in such list of claimants, or in the copy of the register relating to their parish or township, and received by them from the clerk of the peace, is not entitled to have his name upon the register then next to be made, shall add the word " objected " before the name of every such person on the margin of such lists of claimants or the said copy of register ; and the said overseers shall also add the word " dead " before the name of any person in the said copy of the register, whom they shall have reasonable cause to believe to be dead ; and the overseers shall cause a sufficient number of copies of such list of claimants, and of the said copy of the register, with all such marginal additions as aforesaid, to be written or printed, and shall, on or before the first day of August, sign and publish the same ; and the said overseers shall likewise keep a copy of such list of claimants, and of the said copy of the register, with the marginal additions respectively as aforesaid, signed by them, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday, during the first fourteen days after the same shall have been published, and shall deliver written or printed copies thereof, signed by them, to all persons applying for the same, on payment of a price for each copy, after the rate contained in the table hereinbefore mentioned.

*Id.* s. 5. And the list of claimants (if any) so made out by the overseers of every parish or township, together with the said copy of the register, with the marginal additions respectively as aforesaid, for the time being relating to the same parish or township, shall be deemed to be the list of voters of such parish or township for the county within which such parish or township may be situate, for the purposes hereinbefore mentioned. *Id.* s. 6.

And in every year, every person who shall be upon the register for the time being for any county may object to any other person upon any list of voters for such county, as not having been entitled, on the last day of July then next preceding, to have his name inserted in any list of voters for such county ; and every person so objecting (save and except overseers objecting in the manner hereinbefore mentioned), shall, on or before the twenty-fifth day of August in such year, give

or cause to be given to the overseers of the poor of the parish or township to which the list of voters containing the name of the person objected to may relate, a notice, according to the form numbered (4) in the said schedule (A.), or to the like effect; and the person so objecting shall also, on or before the said twenty-fifth day of August, give or cause to be given to the person so objected to, or leave or cause to be left at his place of abode, as described in such list, a notice, according to the form numbered (5) in the said schedule (A.), or to the like effect; and every such notice of objection shall be signed by the party so objecting as aforesaid; and wherever the place of abode of the person objected to as described in the said list, shall not be in the parish or township to which such list may relate, and the name of the occupying tenant of the whole or any part of the qualifying property, together with his place of abode, shall appear in such list, the person so objecting shall also, on or before the same day, give to or leave or cause to be given or left at the place of abode of any such occupying tenant a duplicate notice, signed as aforesaid. *Id.* s. 7.

The overseers shall then make out a list of the persons so objected to, according to the form sent to them by the clerk of the peace, as before mentioned, and shall publish such list on or before the first day of September in such year; and shall also keep a copy of such list, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday, during the first fourteen days of the said month of September, and shall deliver a copy of such list to any person requiring the same, on payment of a price for each copy after the rate contained in the table hereinbefore mentioned. *Id.* s. 8.

And on or before the twenty-ninth August in every year, the overseers of every parish or township shall deliver to the clerk of the peace of the county wherein the said parish or township is situate, the said copy of the register, and the said list of claimants, with the marginal additions respectively as aforesaid, and also a copy of the list of persons objected to respectively signed as aforesaid, and relating to their parish or township. *Id.* s. 9.

*Registration of parliamentary voters for boroughs.]* The town-clerk of every city or borough, on or before the 10th of June, in every year, sends to the overseers of the poor of every parish or township situate wholly or in part within such city or borough, or within any place sharing in the election for such city or borough, a precept, detailing their duties, and instructing them as to the manner in which they are to be performed. At the same time, he sends a sufficient number

of printed forms of—Notices to voters to pay their rates and taxes before the 20th July,—Lists of persons entitled to vote in respect of property,—Lists of persons entitled to vote in other respects, and not as freemen,—Lists of claimants,—Lists of persons objected to,—and a Table of the rates of payment to be demanded and paid for any list or copy of a list, where payment is required or authorized by the statute.

On or before the 20th June in every year, the overseers of every such parish or township shall publish the notice to the voters to pay their rates and taxes above mentioned, stating that no person will be entitled to have his name inserted in any list of voters for the city or borough then next to be made, in respect of the occupation of premises of the clear yearly value of not less than ten pounds, situate wholly or in part within such parish or township, unless he shall pay, on or before the twentieth day of July then next ensuing, all the poor's rates and assessed taxes which shall have become payable from him in respect of such premises during the twelve calendar months next before the [fifth day of January in the same year, 11 & 12 Vict. c. 90, s. 1.] 6 Vict. c. 18, s. 11.

And the overseers, for their assistance in making out the list of voters as hereinafter mentioned (upon request made by them or any of them at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday during the month of July in every year, to any assessor or collector of taxes, or to any other officer having the custody of any tax assessment or duplicate for such parish or township), shall have free liberty to inspect any such tax assessment or duplicate, and to extract such particulars as may appear to such overseer or overseers to be necessary; and every such assessor or collector of taxes shall, within two days after the twentieth of July in every year, make out and deliver to the said overseers a list containing the name and place of abode of every person who shall not have paid, on or before the said twentieth day of July, the assessed taxes which shall have become payable from him in respect of any premises within the said parish or township during the twelve calendar months next before the [fifth of January, 11 & 12 Vict. c. 90, s. 1,] then last past; and the overseers shall keep the said list, to be perused by any person without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the o'clock in the afternoon of any day except Sunday, during the first fourteen days after the list of voters shall have been published, as hereinafter mentioned. 6 Vict. c. 18, s. 12.

On or before the last day of July in every year, the overseers of every such parish or township, shall make out, according to the form sent them by the town-clerk, an alpha-

betical list of all persons who may be entitled to vote in the election of a member or members to serve in parliament for such city or borough, in respect of the occupation of premises of the clear yearly value of not less than ten pounds, situate wholly or in part within such parish or township, and another alphabetical list, according to the form numbered (4) in the said schedule (B.) of all other persons (except freemen) who may be entitled to vote in the election of such city or borough by virtue of any other right whatsoever; and in each of the said lists the christian name and surname of every such person shall be written at full length, together with the place of his abode and the nature of his qualification; and where any person shall be entitled to vote in respect of any property, then the name of the street, lane, and the number of the house (if any), or other description of the place where such property may be situate, shall be specified in the list; and the said overseers shall sign such lists, and shall forthwith cause a sufficient number of copies of each of the said lists to be written or printed; and shall publish copies of the said lists on or before the first day of August in such year; and shall likewise keep a copy of each of the said lists, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday, during the first fourteen days after such lists shall have been so published, and shall deliver copies thereof to all persons applying for the same, on payment of a price for each copy after the rate contained in the table hereinbefore mentioned. *Id.* s. 13. The town-clerk shall prepare the list of freemen. *Id.* s. 14.

On or before the 25th August, every person wishing to have his name on the list of voters, must, according to the form for the purpose contained in the schedule to the Act (sch. B. No. 6), or to the like effect, give notice of his claim to the overseer of the parish or township in the list whereof he shall claim to have his name inserted; or if he claims as freeman, he may give notice to the town-clerk; and the overseers and town-clerks respectively shall include the names of all persons so claiming as aforesaid, in lists, according to the forms in the schedule (B. No. 8, 9) to the Act (*Id.* s. 15); printed forms, to be filled up by the overseers, are sent to them by the town-clerk, as mentioned, *ante*, p. 323:

And all persons occupying rateable property in the borough may claim to be rated to the poor, even although their landlords be already rated for it (2 & 3 Will. 4, c. 45); and they shall be put upon the list of voters, and their names be continued on such list, so long as they continue to occupy the property and pay the rates. 14 & 15 Vict. c. 14, s. 1.

Any person whose name shall be on the list of voters for the time being, or any person who shall have claimed to have



his name inserted in any such list, upon request made by such person, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday, between the tenth day of August and the last day of August, to any overseer or other officer having the custody of any poor-rate book, to inspect such poor-rate book, and make extracts therefrom for any purpose relating to any claim or objection made or intended to be made by or against such person, and every such overseer or other officer as aforesaid, is hereby required, upon such request as aforesaid, to permit such inspection and the making of such extracts, without payment of any fee. *Id.* s. 16.

Every person whose name shall have been inserted in any list of voters for any city or borough may object to any other person as not having been entitled, on the last day of July next preceding, to have his name inserted in any list of voters for the same city or borough; and every person so objecting shall, on or before the twenty-fifth day of August in that year, give or cause to be given a notice, according to the form numbered (10) in the said schedule (B), or to the like effect, to the overseers who shall have made out the list in which the name of the person so objected to shall have been inserted; or if the person objected to shall have been inserted in the list of freemen of any city or borough, except the city of London, then to the town-clerk of such city or borough; and every person so objecting shall also give or cause to be left at the place of abode of the person objected to, as stated in the said list, a notice according to the form numbered (11) in the said schedule (B); and every notice of objection shall be signed by the person objecting. *Id.* s. 17.

And the said overseers shall include the names of all persons so objected to, in a list, according to the form sent to them by the town-clerk; and every town-clerk shall include the names of all persons so objected to as freemen in a list, according to the form numbered (13) in the said schedule (B.); and the said overseers and town-clerks respectively shall sign each of the said lists, and cause copies thereof to be written or printed, and shall publish the said list of persons objected to, and the said list of claimants as aforesaid, on or before the first day of September in the said year; and shall keep copies of the said lists, and shall allow the same, and also the notices of objection which they shall have received, to be perused by any person, without payment of any fee, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday, during the first fourteen days of September in the said year, and shall deliver copies of each of such lists to any person requiring the same, on payment of a price for each copy after the rate contained in the table hereinbefore mentioned. *Id.* s. 18.

And the said overseers shall, on or before the twenty-ninth day of August in every year, deliver to the said town-clerk a copy of the said list of voters made out by them as aforesaid, and a copy of the said list of persons who shall have claimed as aforesaid, and a copy of the list of persons objected to as aforesaid. *Id.* s. 19.

The Act makes some provisions as to the lists of the freemen and liverymen of London (s. 20), and as to the freeholders in Horsham and Malmesbury entitled to vote for New Shoreham and Cricklade (s. 21), which it is not necessary here to notice.

*Attending the revising barristers.]* In counties, the clerk of the peace shall deliver to the barrister the lists of voters for the current year, the list of persons objected to, and one or more copies of the register; and the overseers of every parish and township shall attend the court to be holden for revising the lists relating to their parish or township, and shall deliver to the barrister or barristers holding such court the original notices of claim and notices of objection given to them as aforesaid; and the said clerk of the peace and overseers shall (if required) answer upon oath all such questions as such barrister or barristers may put to them, and produce all documents, papers and writings in their possession, custody, or power, touching any matter therein mentioned. 6 Vict. c. 18, s. 34.

So, in boroughs, the town-clerk and the several overseers for the time being of every parish or township therein, and in the city of London the secondaries and the clerks of the several livery companies of such city, shall attend the first court to be holden before every such barrister for every such city or borough, unless they shall have been respectively required by notice to attend at some other court, in which case they shall attend the said court as required; and the said overseers, town-clerks, and secondaries respectively shall, at the opening of the said court, deliver to the said barrister the several lists so made by them respectively as aforesaid, and also the original notices of claim and of objection received by them as aforesaid, and the said overseers shall also produce at the said court all rates made for the relief of the poor of their respective parishes or townships, between the [fifth day of January, 11 & 12 Vict. c. 90, s. 1] in the year then last past and the last day of July in the then present year; and the said town-clerks, overseers, secondaries, and clerks respectively shall answer upon oath all such questions as any such barrister may put to them or any of them, and produce all documents, papers and writings in their possession, custody or power touching any matter necessary for revising the list of voters; and every such barrister shall have power to require any assessor, collector of taxes, or

other officer having the custody of any tax assessment or duplicate, or any overseer or overseers of a past year, or other person having the custody of any poor rate of the then current or any past year, or any relieving officer, and in the city of London the chamberlain or his deputy, to attend before him at any court to be holden by him in pursuance of this Act, and they shall attend accordingly, and answer upon oath all such questions as such barrister may put to them. *Id.* s. 35.

*Overseers' expenses as to registration, &c.*] An account of all expenses incurred by the overseers of every parish or township in carrying into effect the provisions of this Act, shall be laid before the revising barrister at the court at which the list of voters for such parish or township shall be revised; and the said barrister shall sign and give to the said overseers a certificate of the sum which he shall allow to be due to them in respect of the said expenses; and it shall be lawful for the said overseers to receive the sum so certified to be due to them from and out of the first moneys thereafter to be collected for the relief of the poor in the same parish or township. 6 Vict. c. 18, s. 57.

### 3. THEIR ACCOUNTS.—*Parishes not in Unions or in Audit Districts.*

<i>Overseers to account, 330. Accounts to be examined and allowed, 331.</i>		<i>What disbursements to be al- lowed, 331.</i>
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*Overseers to account.*] By stat. 17 G. 2, c. 38, s. 1, the churchwardens and overseers, every year, within fourteen days after other overseers shall be appointed to succeed them, shall deliver to such succeeding overseers a just, true, and perfect account in writing, fairly entered in a book signed by them, of all sums of money by them received, or rated and not received, and of all goods, stock and materials in their hands or the hands of the poor to be wrought, and of all moneys paid by them, and of all other things concerning their office; and shall pay and deliver all money and goods in their hands to their successors; which account shall be verified on oath before one or more justices of the peace, and be afterwards open to inspection, in the hands of such succeeding overseers. And if they or any of them fail thus to render their accounts, or pay over the balance, &c., two or more justices may commit him or them to the common gaol, until they shall render such account, or shall pay or yield up such moneys, goods, chattels, and other things in their hands as aforesaid. *Id.* s. 2.

But if the parish be in a union, the jurisdiction of the justices to audit the accounts of overseers of all parishes or townships within such district, is taken away, and such accounts can only be audited by such auditor. 7 & 8 Vict. c. 101, s. 37. See tit. "*District Auditor*," *post*.

*Accounts to be examined and allowed.*] The accounts so rendered yearly, shall be submitted by the churchwardens and overseers to two or more justices of the peace of the county, dwelling in or near the parish or place to which such account shall relate, at a special session for that purpose to be holden, [or to the mayor, bailiff, or other head officer, or any two magistrates of a city or town corporate, sect. 4,] within the fourteen days appointed for delivering in such account: and such justices shall, if they think fit, examine every such account and administer an oath to such churchwardens and overseers of the truth of such account; and disallow and strike out all such charges and payments as they shall deem to be unfounded, and reduce such as they shall deem to be exorbitant; specifying upon or at the foot of such account every such charge or payment and its amount, so far as such justices shall reduce the same, and the cause for which the same was disallowed or reduced; and such justices shall signify their allowance and approbation of such account under their hands, and attest the caption of the same at the foot of such account. 50 G. 3, c. 49, s. 1. And if the churchwardens and overseers, or any of them, neglect or refuse so to submit and verify their accounts, or, within ten days after the same are signed and attested, to deliver to their successors any goods, chattels, or other things which appear to be in their hands, any two or more justices may commit him or them to the common gaol, until he or they shall have yielded such account and verified the same, or shall have delivered over such goods, chattels, and other things which shall appear to be so remaining in his or their hands as aforesaid; or if they or any of them refuse or neglect to pay to their successors within fourteen days from the signing and attesting such account, any sum of money or arrearages which on examination of such account shall appear to be due from them or remaining in their hands, the subsequent churchwardens and overseers, by warrant from two or more justices of the peace, may levy the same by distress and sale of the offender's goods; and in default of distress the justices may commit the offender to the common gaol, until the amount be paid. 50 G. 3, c. 49, s. 1.

*What disbursements to be allowed.*] As to the payments which an overseer may legally make, and which, if made, must of course be allowed him in his accounts, it is material to consider the subject at some length.

1. All sums necessarily expended by them in the maintenance of the poor, in pursuance of the stat. 43 Eliz. c. 2, or other statutes upon the subject, shall be allowed to them. See 43 Eliz. c. 2, s. 1; 22 G. 3, c. 83, s. 8; 41 G. 3, c. 9, s. 2. But this is to be understood only of parishes not in union. If in a union, the overseers can only give relief in cases of "sudden and urgent necessity," and then only in kind and not in money. See 4 & 5 W. 4, c. 76, c. 54.

2. All payments which they are obliged to make by any statute, such, for instance, as their parish's proportion of the county rate (see 12 G. 2, c. 29, s. 2); the sums paid by them for outfit, &c. of parish boys, apprenticed to the sea service (7 & 8 Vict. c. 112, s. 35); the burying of the bodies of poor persons who die in their parish (7 & 8 Vict. c. 101, s. 31, *ante*, p. 319); the expense of making out, preparing, printing and collecting the jury lists (7 & 8 Vict. c. 101, s. 60); the expense of perambulating the parish once in every three years, and in setting up and keeping in repair the boundary stones of the parish (*Id.*); or the like,—shall be allowed to them.

3. As to the debts which have been incurred by former overseers, it is enacted by stat. 11 & 12 Vict. c. 91, s. 1, that if the overseers of the poor in any parish shall lawfully, by virtue of their office, contract any debt on account of the parish within three months prior to the termination of their year of office, and the same shall not have been discharged by them before their year of office shall have determined, such debt shall be payable by and recoverable from their immediate successors in office, and chargeable upon the poor rate of the said parish, in like manner as the same would have been payable and chargeable by such first-mentioned overseers during their year of office;—and if any such debt shall have been contracted during their year of office, but more than three months prior to its termination, the same shall be payable by and recoverable from their immediate successors in office, if the ratepayers of the parish in vestry assembled, and the commissioners for administering the laws for relief of the poor in England, shall consent, but not otherwise. See *R. v. Reed et al.*, 18 Law J. 164, *m.*

4. All sums paid by them to the constable, in pursuance of stat. 18 G. 3, c. 19, ss. 3, 4. And these shall not be disallowed. 11 & 12 Vict. c. 91, s. 6.

5. The expenses of litigating settlements, per Ashurst, J., (*R. v. Essex*, 4 T. R. 595), and such other law expenses as have been properly incurred (*R. v. Micklefield*, 1 Bott, 91), shall be allowed to them; but not the expenses of defending an appeal against overseers' accounts (*R. v. Johnson*, 5 Ad. & El. 340); or of improperly defending an appeal against a rate. *R. v. Fouch et al.*, 2 Q. B. Rep. 308; 11 Law J. 1, *m.* *R. v. Great Western Railway Co.*, 18 Law J. 145, *m.* And

where a pauper, guilty of riotous conduct towards an overseer, being given in charge to a constable, was rescued ; and the rescuer being indicted and acquitted, the overseer paid the costs of the prosecution, and charged them in his accounts : the court held that these costs could not be charged to the parish by the overseer, as expenses incurred by him in the execution of his office. *R. v. Bird et al.*, 2 B. & Ald. 522.

By stat. 11 & 12 Vict. c. 91, s. 2, it is provided that where any proceedings have been commenced, or shall be hereafter carried on, for or on behalf of any parish, in a court of law, regarding any matter affecting the poor rates of such parish, it shall not be necessary that the bill of costs of the solicitor or attorney engaged therein shall be paid before the termination of the proceedings, but in any such case the amount of the bill, when duly taxed, if otherwise chargeable against the parish, shall be payable out of the poor rates within the space of one year next following the termination of the proceedings, but not afterwards, unless the commissioners aforesaid shall by their order authorize the payment of the costs and expenses attending any such proceedings by annual instalments not exceeding five, to commence from such termination.

6. The salary of the assistant-overseer (if any have been appointed), under stat. 59 G. 3, c. 12, s. 7, shall be allowed to them. But an overseer cannot charge for a salary to himself; and therefore where, upon an appeal against an overseer's accounts, on the ground that a salary had been allowed to him, and was charged in the account, and the sessions allowed it: the court of King's Bench held, that no such charge could legally be made, saying, that an overseer has no right to a salary for his services; it being suggested, however, that this was really not a salary, but a sum paid to him in respect to the maintenance of the poor, the court quashed the order of sessions, and remitted the case to the sessions to rehear the appeal. *R. v. Glyde*, 2 M. & S. 323, n. Even where in a very extensive parish, twenty-one miles in circumference, containing 13,000 inhabitants, and the poor rates annually amounting to upwards of 8,000*l.*, the common law vestry, who managed the affairs of the parish, came to a resolution not to employ an assistant-overseer, on account of the then embarrassed state of the parish; but directed the overseers to call in what assistance they should stand in need of: and they also resolved that a collector should be paid a poundage for collecting the rates; the overseers accordingly employed and paid persons for making out the poor rates and copies, and making up the accounts, and they paid the collector his poundage: these items being objected to on appeal, and the sessions having disallowed them, the court of King's Bench held that the sessions were right in doing so; it had

been often determined that the overseers cannot be allowed a salary, neither can they employ others at a salary at the public expense; and as for the vestry having directed it, they had no authority by law to do so. *R. v. Gwyer & Manley*, 4 Nev. & M. 158.

7. Where an overseer has advanced his own money for the maintenance, &c., of the poor, he may repay himself out of any money he afterwards receives on account of the poor, during his year of office (per Holt, C. J., *Tawney's case*, 2 Salk. 531); or the succeeding overseers may levy such sums as remained due to him from the ratepayers at the expiration of his office, and reimburse him out of the amount (17 G. 2, c. 38, s. 11); and may, out of any money they may collect in pursuance of any rate by them made for the relief of the poor, reimburse him for any sum he may have advanced during a time when there was no rate, or whilst an appeal was depending which affected the whole rate, or upon the hearing of which the whole rate might have been quashed. 41 G. 3, c. 23, s. 9. See *Tawney's case*, 2 Salk. 531. *R. v. Rotherhithe*, 8 Mod. 338. But where an overseer, appointed for four successive years, made no rate in the three first years, but during that time advanced the necessary sums expended out of his own money; the court held that he could not make a rate in the fourth year, for the purpose of reimbursing himself the money so advanced by him in the other three; they said that overseers should not include several years in their accounts, but should confine them entirely to that year in which they are directed by law to be passed. *R. v. Goodcheap*, 6 T. R. 159.

Lastly, by the Poor-Law Amendment Act (4 & 5 W. 4, c. 76, s. 89,) "all payments, charges and allowances, made by any overseer or guardian, and charged upon the rates for the relief of the poor, contrary to the provisions of this Act or at variance with any rule, order or regulation of the said commissioners made under the authority of this Act, shall be and the same are hereby declared to be illegal, any law, custom or usage to the contrary notwithstanding; and every justice of the peace is hereby required to disallow, as illegal and unfounded, all payments, charges or allowances contrary to the provisions of this Act, or to any such rule, order, or regulation of the said commissioners, which shall be contained in any account of any overseer of the poor or guardians, which shall be presented for the purpose of being passed or allowed."

*Auditing of their accounts.]* Upon this subject, see tit. "*District Auditor*," *post*.

4. FRAUDS AND OFFENCES ETC., BY OVERSEERS.

*Fraud with respect to settlements, 335.*

*Neglect of duty, or disobeying the orders of justices, &c., 337.*

*Embezzling money, &c., 338.*

*Being concerned in furnishing goods, &c., for the poor, 339.*

*Fraud with respect to settlements.]* Where a man, settled in St. Sepulchre's, hired a house at 10*l.* a year in St. Andrew's, in which he resided during the year; he paid two quarters' rent, and upon his application to the overseers of St. Sepulchre's they paid the remainder; the sessions found this payment to be fraudulent upon the part of the overseers, and made by them with a view of settling the tenant in the parish of St. Andrew's: the court held that as the sessions had found this payment to be fraudulent, the tenant gained no settlement; it never could be the meaning of the statute that the renting must be *bonâ fide*, but that the payment of the rent might be *malâ fide*. *R. v. St. Sepulchre, Cambridge*, 1 B. & Ad. 924. So, where the pauper, at Lady-day, 1825, took a tenement at the rent of 10*l.* a year, to commence from Michaelmas following, when the term of the then tenant would expire; but the tenant then in possession gave up the tenement immediately, and the rent up to Michaelmas was afterwards paid to him by the pauper; shortly after, one Waterfield, who was churchwarden of the parish, told the pauper that he had taken his tenement from the landlord, and he was thereafter to pay his rent to him, and he said he should deduct 8*s.* a year from it, making it 9*l.* 12*s.* instead of 10*l.*, but Waterfield in fact paid the landlord the whole 10*l.* and was reimbursed the 8*s.* by the parish: the sessions having found this to be fraudulent on the part of the parish, the court held that the pauper gained a settlement by the renting of this tenement; but independently of the fraud, as the tenement was actually hired at 10*l.* a year, was occupied for a year, and the rent of 10*l.* actually paid, though not by the pauper (and there was nothing in stat. 6 G. 4, c. 57, which required that it should be paid by the tenant), the pauper thereby gained a settlement. *R. v. Kibworth Harcourt*, 7 B. & C. 790.

But where a man, settled in Tillingham, rented a tenement in Bradwell, and being distressed for money to pay his rent, the overseers of Tillingham lent it to him: the court held that as fraud had not been expressly found by the sessions, they could not hold this conduct of the overseers to be fraudulent; it might or it might not be so: if the overseers lent this money for the purpose of relieving the tenant, it would not



be fraudulent; but if for the purpose of gaining a settlement for him in Bradwell, it would be so. *R. v. Tillingham*, 1 B. & Ad. 180.

And the sessions must in all cases find the fraud, otherwise the court of Queen's Bench will not notice it. Therefore where the pauper, then settled in Kempton, purchased a copyhold tenement in St. Paul's, Walden, which, with the fine and fees amounted to 30*l.*, and the overseers of Kempton lent him 40*s.* to pay the fine and fees; it was argued that this was fraudulent upon the part of the overseers, and avoided the settlement: but the court held that they could not notice the fraud, as the sessions had not found it. *St. Paul's, Walden, v. Kempton*, Fol. 283.

If by any practice on the part of parish officers, a woman pregnant of a bastard be conveyed from their parish to another, for the purpose of being delivered there, and the child be born there accordingly, the child, notwithstanding its birth in the latter parish, is deemed to be settled in the former. *Tewkesbury v. Twining*, 2 Bulst. 349. *Masters v. Child*, 3 Salk. 66. But where it appeared that one Elizabeth Otter lived with Green, a farmer, at Mattersey, and had two illegitimate children by him, one of whom was the pauper; when she was pregnant of the pauper, Green sent her to a place called Lodge-on-the-Wolds, which was extra-parochial, to be delivered there, he paying the expenses of her lying-in, and after her delivery she returned to Green, and continued to live with him; it was contended that, as this was a fraud upon the part of Green, a ratepayer, to prevent the child from being chargeable to Mattersey, the case must be considered as if the fraud had not been committed, and the mother not removed: but the court held, that it was only where such a fraud had been practised by the parish officers, that the bastard is deemed to be born in the parish from which the mother was removed; and that not being the case in the present instance, the pauper could not be deemed to be settled in Mattersey. *R. v. Mattersey*, 4 B. & Ad. 211.

But where parish officers fraudulently, by bribes or otherwise, induce or procure a male pauper of another parish to marry a woman settled in and chargeable or likely to be chargeable to their parish, in order to relieve their parish of the burthen, this does not in any manner affect the validity of the marriage, if it be unobjectionable in other respects, nor does it prevent the woman from acquiring her husband's settlement by the marriage. This indeed has been holden to be the subject of an indictment, as a misdemeanor at common law (*R. v. Edwards et al.*, 8 Mod. 320); and the court, in several instances, have granted rules for criminal informations against parish officers, for acting so. *R. v. Watson and Perrott*, 1 Wils. 41. *R. v. Tarrant*, 2 Bott, 74. *R. v.*

*Smith*, 2 Bott, 76. *R. v. Parkins*, 1 Sess. Ca. 176. In the last case upon this subject, however, it appeared that the defendants were indicted for conspiring to cause a poor man settled in St. Ives, to marry a poor unmarried woman, pregnant, who was settled in Chatteris, for the purpose of relieving Chatteris from the burthen of maintaining her, and throwing that burthen upon St. Ives; the defendants were convicted: but the court of King's Bench, upon motion in arrest of judgment, held this to be no offence, as it was not alleged to have been done by any fraud, stratagem, or concealment, or by duress or threat, or any other unfair or undue means: and the judgment was arrested accordingly. *R. v. Seward et al.*, 1 Ad. & E. 708.

By stat. 9 & 10 Vict. c. 66, s. 6, however, if any officer of any parish or union do, contrary to law, with intent to cause any poor person to become chargeable to any parish to which such person was not then chargeable,—convey any poor person out of the parish for which such officer acts, or cause or procure any poor person to be so conveyed,—or give directly or indirectly any money, relief, or assistance, or cause or procure to be afforded any facility, for such conveyance,—or make any offer or promise, or use any threat, to induce any poor person to depart from such parish,—and if, in consequence of such conveyance or departure, any poor person become chargeable to any parish to which he was not then chargeable,—such officer, on conviction thereof before any two justices, shall forfeit and pay for every such offence any sum not exceeding five pounds nor less than forty shillings.

*Neglect of duty, or disobeying the orders of justices, &c.]*  
Upon complaint made on oath to any two or more justices of the peace, at any special or petty sessions, of any neglect of duty or disobedience of any lawful warrant or order of a justice of the peace by any constable, overseer of the poor, or other peace or parish officer (such overseer, &c., having been duly summoned to appear and answer such charge), they may impose, upon conviction, any reasonable fine not exceeding 40s. upon such constable, overseer, &c., as a punishment for such disobedience or neglect of duty, to be applied and disposed of for the relief of the poor of the parish, &c., where the offender shall reside; and by warrant under their hands and seals, they may direct the same to be levied by distress, or for default of distress, they may commit the offender for a time not exceeding ten days. 33 G. 3, c. 55, s. 1. If the party think himself aggrieved by this conviction, he may appeal to the next general or quarter sessions, giving at least ten days' notice of appeal. *Id.*

And by the 4 & 5 W. 4, c. 76, s. 95, in case any overseer, assistant overseer, master of a workhouse, or other officer of

any parish or union, shall wilfully disobey the legal and reasonable orders of the justices and guardians, in carrying the rules, orders, and regulations of the commissioners or assistant commissioners, or the provisions of this Act, into execution,—every such offender shall, on conviction before any two justices, forfeit and pay a sum not exceeding 5*l*. But he shall not be subject to prosecution or penalty for not carrying into execution any illegal order of such justices or guardians. *Id.* s. 96.

If the overseers of any parish wilfully neglect to make or collect sufficient rates for the relief the poor, or to pay such moneys to the guardians of any parish or union as such guardians may require, and if by reason of such neglect any relief directed by the board of guardians to be given to any poor person be delayed or withheld during a period of seven days, every such overseer shall upon conviction thereof forfeit and pay for every such offence any sum not exceeding 20*l*. 7 & 8 Vict. c. 101, s. 63. If at any time the overseers be in arrear with the payment of the contribution orders, the guardians may, through their chairman or acting chairman, apply to any two justices acting within the district, for a summons to show cause, at a special sessions to be summoned for the purpose, why such contribution has not been paid, and after hearing the justices may cause the amount thereof, together with the costs, to be levied by distress and sale of the goods of the overseer. 2 & 3 Vict. c. 84, s. 1.

The stat. 17 G. 2, c. 38, s. 14, also imposes a penalty, not exceeding 5*l*. nor less than 20*s.*, for any neglect or refusal to obey and perform the orders and directions of that Act. And generally, for any gross neglect of duty, or for a refusal or neglect to obey the lawful orders of a magistrate, overseers may be indicted.

*Embezzling money, &c.*] If any overseer, assistant overseer, master of a workhouse or other paid officer, or any other person employed by or under the authority of the guardians, shall purloin, embezzle, or wilfully waste or misapply any of the moneys, goods, or chattels belonging to any parish or union, every such offender shall (besides and in addition to such pains and penalties as he may be liable to independently of this Act), upon conviction before any two justices, forfeit and pay a sum not exceeding 20*l*., and also treble the amount or value of such money, goods, or chattels so purloined, embezzled, wasted, or misapplied; and he shall for ever thereafter be incapable of serving any office under this or any other Act relating to the relief of the poor. 4 & 5 W. 4, c. 76, s. 97. An information, as set out in a conviction on this statute for a misapplication of parish property, must state that the party “wilfully” misapplied, &c., otherwise the justice

will not appear to have jurisdiction. *Carpenter v. Mason et al.*, 10 Law J. 1, m.

*Being concerned in furnishing goods, &c., for the poor.]* No churchwarden or overseer of the poor, or other person having the collection of the poor rate, or the providing for, ordering, management, control, or direction of the poor of any parish, township, hamlet, or place, shall, either in his own name or in the name of any other person, provide, furnish, or supply for his own profit any goods, materials, or provisions for the use of any workhouse, or otherwise for the support and maintenance of the poor, in any parish, township, hamlet, or place for which he shall be appointed as such, during the time he shall retain such appointment,—nor shall be concerned, directly or indirectly, in furnishing or supplying the same, or in any contract relating thereto,—under pain of forfeiting the sum of 100*l.*, with full costs of suit, to any person who will sue for the same by action of debt in any of the courts of record at Westminster. 55 G. 3, c. 137, s. 6. See *Henderson et al. v. Sherborne*, 2 Mees. & W. 236.

But if no other person can be found within a convenient distance of the workhouse competent and willing to supply it with the articles required, two or more justices by certificate under their hands and seals, may permit any such overseer, &c., to contract for the supply of any articles or things required for such workhouse, or otherwise for the use of the poor of such parish, &c.,—such certificate to be entered and a copy left with the clerk of the peace of the county, &c., or the town-clerk of the city or borough, where such person resides;—in which case he shall not incur the penalty aforesaid. *Id.*

This penalty and provision are extended and made applicable to every commissioner, assistant commissioner, guardian, treasurer, master of a workhouse, or other officer, to be appointed under the provisions of the Poor Law Amendment Act. 4 & 5 W. 4, c. 76, s. 51. It extends also to guardians appointed under stat. 22 G. 3, c. 83. *West v. Andrews*, 1 B. & C. 77.

The above stat. 55 G. 3, c. 137, has been holden to extend to the case of a guardian of the poor selling sheep to the master of a workhouse (who was appointed by the guardians), although such master had contracted to maintain the poor at a certain sum per head. *West v. Andrews*, 5 B. & A. 328. And it is no defence to the action, to say that the defendant furnished the goods at a fair market price; for still it is done for his profit. *Pope v. Backhouse*, 8 Taunt. 239. If however he supply the goods, but not for profit, his case is not within the statute. *Skinner v. Buckee*, 3 B. & C. 6. So, if he supply materials for the repair of a workhouse, it is not within the

statute. *Barber v. Waite*, 1 Ad. & El. 514. So, supplying goods to an individual pauper, with his consent, as a portion of the relief ordered to be given him, was holden not to be within the statute; for the statute extended only to cases where the goods were supplied for the use of the poor generally. *Proctor v. Mainwaring*, 3 B. & A. 145. But now, by stat. 4 & 5 W. 4, c. 76, s. 77, it shall not be lawful for any person, filling an office concerned in the administration of the laws for the relief of the poor, to furnish or supply, for his own profit, or on his own account, any goods, materials, or provisions ordered to be given in parochial relief,—or to furnish or supply any goods, materials, or provisions for or in respect of the money ordered to be given in parochial relief, to any person in such parish or union;—and every person so offending shall, on conviction before any two justices of the peace, be subject to a penalty of 5*l.*, one-half to be paid to the informer, the other half in aid of the poor rates of such parish or union.

#### 5. ACTIONS, &C., BY OR AGAINST THEM.

<i>Actions, &amp;c., by them</i> , 340. <i>Recovery of parish houses, &amp;c.</i> , 340.		<i>Prosecutions under stat. 14 &amp; 15 Vict. c. 11</i> , p. 342. <i>Actions against them</i> , 342.
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*Actions, &c., by them.*] The property in all goods, furniture, provisions, clothes, linen, and wearing apparel, tools, utensils, materials, and things whatsoever, had, bought, procured, or provided for the use of any parish, township, hamlet, or place, are vested in the overseers of the poor of such parish, &c., for the time being, and their successors in office, who are empowered to bring any action, or prefer any bill of indictment against any person who shall steal, take, or carry away, or buy or receive any such goods, &c.; and in every such action and indictment, the said goods, &c., shall be laid or described to be the property of the overseers of the poor for the time being of such parish, &c., without stating or specifying the names of any of them: this, however, is not to be deemed to repeal the provisions in local Acts, whereby such property may be vested in other persons. 55 G. 3, c. 137, s. 1.

So, the churchwardens and overseers for the time being may sue on a bond given under stat. 59 G. 3, c. 12, s. 7, for the due performance of the duties of assistant overseer. *Skelton et al. v. Rushby et al.*, 19 Law J. 29, *m.*

In all other cases, overseers of the poor must sue as ordinary individuals.

*Recovery of parish houses, &c.*] If any person who shall have been permitted to occupy any parish or town house, or

any other tenement or dwelling belonging to or provided by, or at the charge of, any parish, for the habitation of the poor thereof,—or who shall have unlawfully intruded himself or herself into any such house, tenement, or dwelling, or into any house, tenement, or hereditament belonging to such parish,—shall refuse or neglect to quit the same, and deliver up the possession thereof to the churchwardens and overseers of the poor of any such parish, within one month after notice and demand in writing for that purpose, signed by such churchwardens and overseers, or the major part of them, shall be delivered to the person in possession, or in his or her absence affixed on some notorious part of the premises,—any two justices of the peace, upon complaint to them made by one or more of the churchwardens and overseers of the poor of the parish in which such house, tenement, or dwelling shall be situate, may issue their summons to the person against whom such complaint shall be made, to appear before such justice at the time and place to be appointed by them, and to cause such summons to be delivered to the party against whom such complaint shall be made, or in his or her absence to be affixed on the premises, seven days at the least before the time appointed for hearing such complaint; and such justices shall, upon the appearance of the defendant, or upon proof on oath that such summons hath been delivered or affixed as hereby directed, proceed to hear and determine the matter of such complaint; and if they shall find and adjudge the same to be true, then by warrant under their hands and seals, they shall cause possession of the premises in question to be delivered to the said churchwardens and overseers, or to some of them. 59 G. 3, c. 12, s. 24. See *Wildbore v. Rainford et al.*, 8 B. & C. 4; and see *Doe v. Hiley*, 10 id. 885. *R. v. JJ. of Middlesex*, 7 Dowl. 767. *Smith v. Adkins et al.*, 8 Mees. & W. 362.

And if any person to whom any land, appropriated, purchased, or taken under the authority of this Act for the employment of the poor of any parish, or to whom any other lands belonging to such parish, or to the churchwardens and overseers thereof, or either of them, shall have been let for his or her own occupation, shall refuse to quit and deliver up the possession thereof to the churchwardens and overseers of the poor of such parish, at the expiration of the term for which the same shall have been demised or let to him or her;—or if any person shall unlawfully enter upon, or take or hold possession of, any such land, or any other land or hereditaments belonging to such parish, or to the churchwardens or overseers, or to either of them, it shall be lawful for such churchwardens and overseers, or any of them, after such notice and demand of possession as is by this Act directed in the case of parish houses (*supra*), to exhibit a complaint against the

person in possession of such land before two justices of the peace, who shall proceed thereon, and hear and determine the matter thereof; and if they shall find and adjudge the same to be true, they shall cause possession of such land to be delivered to such churchwardens and overseers, or some of them, in like manner as by this Act is directed with regard to parish houses. *Id.* s. 25.

These provisions have been extended to the guardians of unions and parishes, by stat. 5 & 6 W. 4, c. 69, s. 5.

*Prosecutions under stat. 14 & 15 Vict. c. 11.]* By stat. 14 & 15 Vict. c. 11, which makes it a misdemeanor to refuse or neglect to supply necessary food to apprentices or servants, or unlawfully to assault them, it is enacted by sect. 6, that for any offence against that Act,—or for any injury inflicted upon a poor person under the age of sixteen, amounting to felony, or an attempt to commit a felony, or an assault with intent to commit a felony, two justices may certify that the prosecution should be conducted by the guardians, or where there are no guardians by the overseers of the poor of the parish, who shall thereupon conduct the prosecution, and pay the expenses out of the union or parish fund.

*Actions against them.]* Overseers may be sued in the same manner, and for the same causes of action, as any other individuals. If all the churchwardens and overseers join in an order for goods to be supplied to the poor, they are all jointly liable; and even where an assistant overseer also joined in such an order, he was holden to be jointly liable with the others. *Kirby v. Bannister*, 3 B. & Ad. 1069. But if the order be given by one only, then it must depend upon the particular circumstances of the case, whether the others are jointly liable with him (*Eden v. Titchmarsh*, 1 Ad. & El. 691): if the goods were furnished upon the credit of the overseer alone who ordered them, he alone would be liable; but if the credit were given to the parish, then his co-overseers, &c., would be jointly liable with him. *Id.* So, where at the request of one overseer, but without the knowledge of the others, a party paid several sums to a pauper residing out of the parish, and no demand of repayment was made upon the overseers generally until after they were out of office: it was holden to be a question proper to be left to the jury to say, whether under these circumstances the party ought not to be considered as having relied upon the sole responsibility of the overseer at whose request the payment was made. *Malkin v. Vickerstaff*, 3 B. & A. 89. But where one overseer borrows money on account of his parish, he alone is liable for the repayment of it: his co-overseers are not; for it is no part of the duty of an overseer to borrow

money for parochial purposes, and therefore no contract to repay it can be implied upon the part of those who were not actual parties to the borrowing of it. *How v. Kaeck*, 1 Bott, 339. *Massey v. Knowles*, 3 Stark. 65. Nor can overseers, by their contracts, render their successors liable. *Snowden v. Emsley*, 3 Stark. 28. *Chambers v. Jones et al.*, 19 Law J. 239, *ex.*

If a surgeon attend a pauper, without the orders or sanction of the overseers, he cannot afterwards sue the overseers for the amount of his bill, unless they have expressly promised to pay it. *Atkins v. Banwell*, 2 East, 505. *Gent v. Tomkins*, 5 B. & C. 746, *n.* *Watling v. Walters*, 1 Car. & P. 132. *Lyde v. Higgins*, 1 Smith, 305. *Wing v. Mill*, 1 B. & A. 104, or be under a legal obligation to have found medical assistance for the pauper. *Tomlinson v. Bentall*, 5 B. & C. 788; and see *Lamb v. Bunce*, 4 M. & S. 275. *Paynter v. Williams*, 1 Cr. & M. 810. As to actions against them for alleged illegal distress for poor rate, see *Priestly v. Watson*, 2 Cr. & M. 691.

In all actions against them, for anything done by them touching or concerning their office, the venue must be laid in the county where the fact was committed (21 J. 1, c. 12, s. 5); the defendants may plead the general issue, and give the special matter in evidence (*Id.* s. 3. 7 J. 1, c. 5); and if they have a verdict, or the plaintiff become nonsuit, &c., they shall have double costs. *Id.* See also 43 El. c. 2, s. 19.

## 6. ASSISTANT OVERSEERS.

The inhabitants of any parish in vestry assembled, [or of any township, village, or place, having separate overseers of the poor and maintaining their poor separately, in a meeting of the inhabitants thereof, holden after due and legal notice, sect. 35,] may nominate and elect any discreet person and persons to be assistant overseer or overseers of the poor of such parish, &c., and determine and specify the duties to be by him or them executed and performed, and fix such yearly salary for the execution of the said office, as shall by such inhabitants be thought fit;—and any two justices of the peace shall, by warrant under their hands and seals, appoint the person or persons so nominated and selected, to be assistant overseer or overseers of the poor, for such purposes and with such salary as shall have been fixed by the inhabitants; and every person so appointed shall execute such of the duties of overseer of the poor, as shall in the warrant for his appointment be expressed, in the same manner as they may be executed by any ordinary overseer of the poor; and he shall continue to be assistant overseer, until he shall resign the



office, or his appointment be revoked by the inhabitants in vestry, &c., assembled;—and the said inhabitants, upon their electing an assistant overseer, may require and take security for the faithful execution of his office, by bond, with or without a surety, in such penalty as they shall think fit, to be made to the [churchwardens and] overseers, who, on breach of the condition, may put the same in suit by the direction of the vestry, &c. 59 G. 3, c. 12, s. 7.

The appointment may be thus:—*Berkshire*:—*Whereas A. B., of —, was on —, at —, duly nominated and elected by the inhabitants of the parish of C., then and there, in vestry assembled, to be assistant overseer of the poor of the said parish; and the said inhabitants did then and there determine and specify the following duties of overseer of the poor, which by the said A. B. shall be executed and performed, that is to say [here specify the duties]: and the said inhabitants then and there did also fix the yearly salary of the said A. B. to be £—, for his execution of the said office, to be paid to him [at four quarterly payments in every year, that is to say, at —, &c.]: we therefore, two of Her Majesty's justices of the peace in and for the said county, in pursuance of the statute in such case made and provided, do hereby appoint the said A. B., so nominated and elected as aforesaid, to be assistant overseer of the poor of the said parish, for the purpose of executing the said duties so specified, and with the said yearly salary so fixed, by the said inhabitants in vestry assembled, as aforesaid. Given under our hands and seals, &c.*

But if a collector of poor rates be appointed for the parish under an order of the poor law commissioners or of the poor law board, all powers of the inhabitants of any parish in vestry assembled, or of justices of the peace, or of any person other than the board of guardians of the parish or union, to appoint any collector for any such parish, and (except when otherwise directed by the commissioners) all appointments under such powers shall cease. 7 & 8 Vict. c. 101, s. 62.

## PAID OFFICERS.

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1. *Paid Officers generally*, p. 345.
2. *Particular Officers*, p. 353.
3. *Officers of the Workhouse*, p. 384.

### 1. PAID OFFICERS GENERALLY.

*Their appointment*, 345.  
*Qualification required*, 348.  
*Remuneration*, 348.  
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*Their appointment.*] The poor law commissioners may, by order under their hands and seal, direct the overseers or guardians of any parish or union, or of so many parishes or unions as the said commissioners in such order may specify and declare to be united for the purpose only of appointing and paying officers,—to appoint such paid officers,\* with such qualifications as the said commissioners shall think necessary, for superintending or assisting in the administration of the relief and employment of the poor, and for the examining and auditing, allowing or disallowing of accounts in such parish or union or united parishes, and otherwise carrying the provisions of this Act into execution; and the said commissioners may define and direct the execution of the respective duties of such

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\* The word "*officer*," includes "any clergyman, schoolmaster, person duly licensed to practise as a medical man, vestry clerk, treasurer, collector, assistant overseer, governor, master or mistress of a workhouse, or any other person who shall be employed in any parish or union, in carrying this Act or the laws for the relief of the poor into execution, and whether performing one or more of the above-mentioned functions." 4 & 5 W. 4, c. 76, s. 100.

officers, and the places or limits within which the same shall be performed, and direct the mode of the appointment and determine the continuance in office or dismissal of such officers, and the amount and nature of the security to be given by such of them as the said commissioners shall think ought to give security; the commissioners also, when they may see occasion, may regulate the amount of salaries of the officers, the time and mode of payment, and the proportions in which the parishes or unions shall contribute to them. 4 & 5 W. 4, c. 76, s. 46. See *R. v. Poor Law Commissioners*, 11 Ad. & El. 558. *R. v. Braintree*, 10 Law J. 76, m.; 1 Q. B. 130. And the authority of the poor law commissioners in this respect, extends as well to parishes regulated by local Acts, as to those which are not. *R. v. Poor Law Commissioners, re St. James's, Westminster*, 20 Law J. 236, m. Also in unions under Gilbert's Act it has been holden that the commissioners have authority to order the guardians to appoint an auditor and clerk to the guardians, these being officers within the meaning of the above section, but they cannot assign to them other duties than such as are above mentioned. *R. v. Poor Law Commissioners, in the matter of Allstonfield Union*, MS. H. 1840; 11 Ad. & El. 558. Under this section, however, it was holden that the commissioners had no authority to order the guardians of a union to appoint a collector of rates for any particular parish in the union. *R. v. Poor Law Commissioners, in the matter of St. Andrew's Parish*, MS. H. 1839; S. C. 9 Ad. & El. 901; they have since, however, had authority to make such an order given to them by statute. 7 & 8 Vict. c. 101, s. 62. As to their power of removing such officers,—it has been holden by Erle, J., that the commissioners, by their order, may remove any paid officer, at their discretion, without giving him notice of their intention to do so, or hearing what he has to say in his defence. *Re Teather and the Poor Law Commissioners*, 19 Law J. 70, m. Also the commissioners cannot themselves appoint, nor can they order any other than the guardians to appoint, any of these paid officers. *R. v. Hunt*, 9 Law J. 86, m.; 12 Ad. & El. 130.

No person shall be eligible to hold any parish office, or have the management of the poor in any way, who shall have been convicted of felony, fraud, or perjury. 4 & 5 W. 4, c. 76, s. 48.

The commissioners may also by their order remove any master of any workhouse, or assistant overseer, or other paid officer of any parish or union, and require others to be appointed in their stead; and the person so removed shall not afterwards be appointed to any paid office without the consent of the commissioners. 4 & 5 W. 4, c. 76, s. 48. Nor

is he capable of being elected a guardian of the poor within five years after the date of his dismissal. 5 & 6 Vict. c. 57, c. 14.

As to the appointment of paid officers generally, the consolidated order of the poor law commissioners, 24th July, 1847, provides :—

*Art. 153.* The guardians shall, whenever it may be requisite, or whenever a vacancy may occur, appoint fit persons to hold the under-mentioned offices, and to perform the duties respectively assigned to them.

1. Clerk to the Guardians.
2. Treasurer of the Union.
3. Chaplain.
4. Medical Officer for the Workhouse.
5. District Medical Officer.
6. Master of the Workhouse.
7. Matron of the Workhouse.
8. Schoolmaster.
9. Schoolmistress.
10. Porter.
11. Nurse.
12. Relieving Officer.
13. Superintendent of Out-door Labour.

And also such assistants as the guardians, with the consent of the commissioners, may deem necessary for the efficient performance of the duties of any of the said offices.

*Art. 154.* The officers so appointed to or holding any of the said offices, as well as all persons temporarily discharging the duties of such offices, shall respectively perform such duties as may be required of them by the rules and regulations of the commissioners in force at the time, together with all such other duties, conformable with the nature of their respective offices, as the guardians may lawfully require them to perform.

Provided always, that every regulation applying to any officer holding his office under this order, shall apply to any officer of the like denomination appointed by the guardians, although such officer may have been appointed before this order shall have come into force.

*Art. 155.* Every officer and assistant, to be appointed under this order, shall be appointed by a majority of the guardians present at a meeting of the board, consisting of more than three guardians, or by three guardians if no more be present. Every such appointment shall, as soon as the same has been made, be reported to the commissioners by the clerk.

*Art. 156.* No appointment to any of the offices specified in *Art. 153* shall be made under this order, unless a notice that the question of making such appointment will be brought

before the board has been given and entered on the minutes, at one of the two ordinary meetings of the board next preceding the meeting at which the appointment is made, or unless an advertisement giving notice of the consideration of such appointment shall have appeared in some public paper by the direction of the guardians at least seven days before the day on which such appointment is made: provided that no such notice or advertisement shall be necessary for the appointment of an assistant or temporary substitute.

*Qualification required.]* By the consolidated order,—

*Art. 162.* No person shall hold the office of clerk, treasurer, master, or relieving officer under this order who has not reached the age of twenty-one years.

*Art. 163.* No person shall hold the office of master of a workhouse, or matron of a workhouse having no master, unless he or she be able to keep accounts.

*Art. 164.* No person shall hold the office of relieving officer unless he be able to keep accounts, and unless he reside in the district for which he may be appointed to act, devote his whole time to the performance of the duties of his office, and abstain from following any trade or profession, and from entering into any other service.

*Art. 165.* No person shall hold the office of nurse who is not able to read written directions on medicines.

*Art. 166.* Provided always, that the guardians may, with the consent of the commissioners previously obtained, but not otherwise, dispense with any of the conditions specified in Arts. 162, 163, 164, and 165.

*Art. 167.* No person shall be appointed to the office of master, matron, schoolmaster, schoolmistress, porter, or relieving officer, under this order, who does not agree to give one month's notice previous to resigning the office, or to forfeit one month's amount of salary, to be deducted as liquidated damages from the amount of salary due at the time of such resignation.

As to the qualification of the surgeon, see *post*, p. 361; of the chaplain, *post*, p. 384.

*Remuneration.]* By the consolidated order,—

*Art. 172.* The guardians shall pay to the several officers and assistants appointed to or holding any office or employment under this order, such salaries or remuneration as the commissioners may from time to time direct or approve.

Provided that the guardians, with the approval of the commissioners, may pay to any officer or person employed by such guardians a reasonable compensation on account of extraordinary services, or other unforeseen circumstances connected

with the duties of such officer or person, or the necessities of the union.

**Art. 173.** The salary of every officer or assistant appointed to, or holding any office or employment under this order, shall be payable up to the day on which he ceases to hold such office or employment, and no longer.

**Art. 174.** If no remuneration or salary be expressly assigned to the treasurer, the profit arising from the use of money from time to time left in his hands shall be deemed to be the payment of his services.

**Art. 175.** An officer who may be suspended, and who may, without the previous removal of such suspension, be dismissed by the commissioners, shall not be entitled to any salary from the date of such suspension.

**Art. 176.** The guardians shall not pay to any officer bound to account, to be hereafter appointed, who may have been removed, or who may be under suspension from his office, any salary claimed by such officer, until his accounts shall have been audited by the auditor.

*Security, in what cases required.]* By the consolidated order,—

**Art. 184.** Every treasurer, master, matron of a workhouse in which there is no master, collector, or relieving officer, every person hereafter appointed as clerk, and every other officer whom the guardians shall require so to do, shall respectively give a bond conditioned for the due and faithful performance of the duties of the office, with two sufficient sureties, not, in the case of any security to be hereafter entered into, being officers of the same union; and every officer who shall have entered into any such security shall give immediate notice to the guardians of the death, insolvency, or bankruptcy of either of such sureties, and shall, when required by the guardians, produce a certificate, signed by two householders, that his sureties are alive, and believed by them to be solvent; and such officer shall supply a fresh surety, in the place of any such surety who may die, or become bankrupt or insolvent.

**Art. 185.** Provided that the guardians may, if they think fit, take the security of any society or company expressly authorized by statute to guarantee or secure the faithful discharge of the duties of such officers.

**Art. 186.** Provided also, that the guardians may, with the consent of the commissioners, dispense with such security in the case of any banking firm acting as treasurer, or in the case of a treasurer being a banker or partner of such firm.

See *Bamford et al. v. Iles et al.*, 18 Law J. 48, m.

*Their continuance in office.]* By the consolidated order,—

**Art. 187.** Every officer appointed to or holding any office

under this order, other than a medical officer, shall continue to hold the same until he die, or resign, or be removed by the commissioners, or be proved to be insane, to the satisfaction of the commissioners.

*Art. 188.* Provided always, that every porter, nurse, assistant, or servant may be dismissed by the guardians without the consent of the commissioners; but every such dismissal, and the grounds thereof, shall be reported to the commissioners.

*Art. 189.* If any master and matron hereafter appointed be husband and wife, and one of them should be dismissed by order of the commissioners, or shall otherwise vacate his or her office, or should die, the other or survivor shall, at the expiration of the then current quarter, cease to hold his or her office of master or matron as the case may be.

*Art. 190.* No officer of a workhouse, who may have been dismissed by any order of the commissioners, shall after such dismissal remain upon the workhouse premises, or enter therein for the purpose of interfering in the management of such workhouse, unless the commissioners have consented to his subsequent appointment to an office in such workhouse, under the provisions of the said first recited Act, or to his temporary employment therein.

As to the time the medical officer, either of the workhouse or of the district, shall retain his office, see *post*, p. 359.

*Art. 192.* The guardians may, at their discretion, suspend from the discharge of his or her duties, any master, matron, schoolmaster, schoolmistress, medical officer, relieving officer, or superintendent of out-door labour; and the guardians shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to the commissioners; and if the commissioners remove the suspension of such officer by the guardians, he or she shall forthwith resume the performance of his or her duties.

*Art. 193.* If any officer, or assistant, appointed to or holding any office or employment under this order, be at any time prevented by sickness or accident, or other sufficient reason, from the performance of his duties, the guardians may appoint a fit person to act as his temporary substitute, and may pay him a reasonable compensation for his services; and every such appointment shall be reported to the commissioners as soon as the same shall have been made.

*Art. 194.* The vice-chairman, or some guardian to be appointed by the guardians, may perform any of the duties assigned to the clerk, until any vacancy in the office shall have been filled, or until a substitute be appointed in the case of the sickness, accident, or absence of the clerk.

**Art. 195.** When any officer may die, resign, or become legally disqualified to perform the duties of his office, the guardians shall, as soon as conveniently may be after such death, resignation, or disqualification, give notice thereof to the commissioners, and proceed to make a new appointment to the office so vacant in the manner prescribed by the above regulations.

**Art. 196.** If any officer give notice of an intended resignation, to take effect on a future day, the guardians may elect a successor to such officer, in conformity with the above regulations, at any time subsequent to such notice.

*Personal discharge of their duties.]* By the consolidated order,—

**Art. 198.** In every case not otherwise provided for by this order, every officer shall perform his duties in person, and shall not intrust the same to a deputy, except with the special permission of the commissioners on the application of the guardians.

**Art. 199.** Every medical officer shall be bound to visit and attend personally, as far as may be practicable, the poor persons intrusted to his care, and shall be responsible for the attendance on them.

*In what cases to account.]* Every treasurer or other person having the collection, receipt or distribution of the money assessed for the relief of the poor in any parish or union, or holding or accountable for any balance or sum of money, or any books, deeds, papers, goods or chattels relating to the relief of the poor, or the collection or distribution of the poor rate, shall account, in such manner as is mentioned *post*, p. 356. 4 & 5 W. 4, c. 76, s. 47.

*Disobeying justices or guardians.]* If any master of a work-house, or other officer of any parish or union, shall wilfully disobey the legal and reasonable orders of justices and guardians in carrying the rules, orders, and regulations of the commissioners or assistant commissioners, or the provisions of this Act, into execution,—every such offender, upon conviction before any two justices, shall forfeit and pay not more than 5*l.* *Id.* s. 94.

*Furnishing goods, &c. to the poor, for their own profit.]* It shall not be lawful for any person, filling an office concerned in the administration of the laws for the relief of the poor, to



furnish or supply, for his own profit, or on his own account, any goods, materials, or provisions ordered to be given in parochial relief, or to furnish or supply any goods, materials, or provisions for or in respect of the money ordered to be given in parochial relief to any person in such parish or union ; and every person so offending shall, on conviction before any two justices of the peace, be subject to a penalty of 5*l.*, one-half to be paid to the informer, the other half in aid of the poor rates of such parish or union. *Id.* s. 77.

The statute provides also that so much of stat. 55 G. 3, c. 137, as inflicts a penalty on persons having the management of the poor, if concerned in providing, or in any contract for the supply of, any goods, materials or provisions for the use of any workhouse, or otherwise for the support or maintenance of the poor, for their own profit, shall apply to all officers appointed under the provisions of this Act. *Id.* s. 51. See *ante*, p. 339.

*Receipt and payment of money by officers.]* Also, by the consolidated order, it is provided with regard to the receipt and payment of money by officers,—

*Art.* 218. No clerk, relieving officer, master, or other officer appointed to or holding any office under this order, shall, directly or indirectly, receive or bargain to receive any gratuity, per centage, or allowance of any kind with reference to any contract with the guardians, or in respect of any payment made or to be made for goods supplied or work executed according to the order of such guardians, or on their behalf.

*Art.* 219. No clerk shall directly or indirectly cause to be paid to himself, or shall pay away on his own account, or for his own benefit, any cheque drawn by the guardians, and made payable to any person other than himself.

*Art.* 220. Every clerk receiving any cheque or money from the guardians on account of any other party, shall transmit the same within fourteen days to the proper persons, and shall produce the receipt or acknowledgment for the same at the next ordinary meeting after the same has come to his hands.

*Art.* 221. Every officer of the union who may receive money on behalf of the guardians thereof, shall forthwith pay the same into the hands of the treasurer of the union, to the credit of the guardians, notwithstanding that any salary or balance may be due from the union to such officer.

*Art.* 222. No relieving officer, or other officer of any guardians, nor any assistant overseer or collector shall receive money for the relief of any non-settled pauper on behalf of any officer, or of the guardians, of any other parish or union, or shall constitute himself in any way the agent of any officer or

guardians of such other parish or union, except as is provided in this order.

*Art. 223.* If any money be transmitted to any officer, contrary to the provisions of this order, such officer shall forthwith pay such money into the hands of the treasurer of the union whose officer he is, and shall report to the guardians at their next meeting the fact that such money has been so received and paid, and shall make a true entry accordingly in his accounts.

*Embezzling or misapplying moneys, &c.]* If any master of a workhouse, or other paid officer, or any other person employed by or under the authority of the said guardians, shall purloin, embezzle, or wilfully waste or misapply any of the moneys, goods, or chattels belonging to any parish or union, every such offender shall (besides and in addition to such pains and penalties as such person shall, independently of this Act, be liable to) forfeit and pay for every such offence any sum not exceeding 20*l.*, and also treble the amount or value of such money, goods, or chattels so purloined, embezzled, wasted, or misapplied; and every person so convicted shall thereafter be incapable of serving office under this or any other Act in relation to the relief of the poor. 4 & 5 Will. 4, c. 76, s. 97. An information on this section, for misapplying money belonging to a parish, was holden bad, because it did not allege that the defendant "wilfully" misapplied it. *Carpenter v. Mason et al.*, 12 Ad. & El. 629.

## 2. PARTICULAR OFFICERS.

*Clerk to the Guardians*, p. 353.

*Treasurer*, p. 356.

*Relieving Officer*, p. 357.

*Medical Officer*, p. 359.

*District Auditor*, p. 367.

### *Clerk to the Guardians.*

The guardians of every union shall appoint a clerk. *Ante*, p. 847. Art. 153.

By stat. 7 & 8 Vict. c. 101, s. 68, it is enacted that, notwithstanding anything contained in stat. 6 & 7 Vict. c. 73, as to attorneys, it shall be lawful for any clerk or other officer to any board of guardians, constituted under the said first-recited Act or under any local Act, or to any district board, if duly empowered by such board, to make or resist any application, claim or complaint, or to take and conduct any proceedings on behalf of such board before any justice or justices of the peace, at petty or special sessions, or out of sessions, although such

clerk or officer be not an attorney or solicitor, or have not obtained a stamped certificate in pursuance of the provisions of the said Act.

By the consolidated order,—

*Art. 202.* The following shall be the duties of the clerk :—

No. 1. To attend all meetings of the board of guardians, and to keep punctually minutes of the proceedings at every meeting, to enter the said minutes in a book, and to submit the same so entered to the presiding chairman at the succeeding meeting for his signature.

No. 2. To keep, check, and examine all accounts, books of accounts, minutes, books, and other documents as required of him by the regulations of the commissioners, or relating to the business of the guardians, and from time to time to produce all such books and documents, together with the necessary vouchers, and the bonds of any officers, with any certificates relating thereto, which may be in his custody, to the auditor of the union, at the place of audit, and at the time and in such manner as may be required by the regulations of the commissioners.

No. 3. To peruse and conduct the correspondence of the guardians according to their directions, and to preserve the same, as well as all orders of the commissioners, and letters received, together with copies of all letters sent, and all letters, books, papers, and documents belonging to the union, or intrusted to him by the guardians, and to make all necessary copies thereof.

The following directions should be implicitly attended to in conducting the official correspondence of the union with the poor law board in London :—

1. That no documents, except returns signed by the clerk, be transmitted to the board unaccompanied by a letter authenticating it.

2. That every distinct subject of communication, whether relating to the union or to any separate parish in it, form a distinct letter on a separate sheet of foolscap paper.

3. That where previous communications have taken place on the same subject, the official number and date of the last communication be quoted.

4. That the name of the union and day of meeting of the board of guardians, and where the meetings are held otherwise than weekly, the date of the meeting next following the communication, be placed at the head of all communications from the guardians to the board.

5. That all communications and packages from the country which are directed to the board, be, as far as the arrangements of the post office will permit, transmitted through the post and be directed under cover,

*“ To the Poor Law Board,  
Whitehall, London.”*

**No. 4.** To prepare all written contracts and agreements to be entered into by any parties with the guardians, and to see that the same are duly executed, and to prepare all bonds or other securities to be given by any of the officers of the union, and to see that the same are duly executed by such officers and their sureties.

**No. 5.** To receive all requisitions of guardians for extraordinary meetings, and to summon such meetings accordingly ; and to make, sign, and send all notices required to be given to the guardians, by this or any other order of the commissioners.

**No. 6.** To countersign all orders legally made by the guardians on overseers, for the payment of money, and all orders legally drawn by the guardians upon the treasurer.

**No. 7.** To ascertain, before every ordinary meeting of the board, the balance due to or from the union, in account with the treasurer, and to enter the same in the minute book.

**No. 8.** At the first meeting of the guardians in each quarter, to lay before the guardians, or some committee appointed by them, the non-settled poor account, and the non-resident poor account, posted in his ledger to the end of the preceding quarter, and to take the directions of the guardians respecting the remittance of cheques or post office orders to the guardians of any other union or parish, or the transmission of accounts due from other unions or parishes, and requests for payment.

**No. 9.** Within fourteen days from the close of each quarter, to transmit by post all accounts of relief administered in the course of the preceding quarter to non-settled poor to the guardians of the unions and parishes on account of which such relief was given ; and to state in every account so transmitted the names and classes of the several paupers to whom the relief in question has been administered.

**No. 10.** To communicate to the several officers and persons engaged in the administration of relief within the union, all orders and directions of the commissioners, or of the guardians ; and so far as may be to give the instructions requisite for the prompt and correct execution of all such orders and directions, and to report to the guardians any neglect or failure therein which may come to his knowledge.

**No. 11.** To conduct all applications by or on behalf of the guardians to any justice or justices at their special, petty, or general sessions, and if he be an attorney or solicitor, to perform and execute all legal business connected with the union, or in which the guardians shall be engaged, except prosecutions at the assizes, actions at law, suits in equity, or parliamentary business, without charge for anything beyond disbursements.

**No. 12.** To prepare and transmit all reports, answers, or

returns as to any question or matter connected with or relating to the administration of the laws for the relief of the poor in the union, or to any other business of the union, which are required by the regulations of the commissioners, or which the commissioners, or any assistant commissioner, may lawfully require for him.

No. 13. To conduct duly and impartially, and in strict conformity with the regulations in force at the time, the annual or any other election of guardians.

No. 14. To observe and execute all lawful orders and directions of the guardians applicable to his office.

### *Treasurer.*

The guardians shall also appoint a treasurer.

By the consolidated order,—

*Art. 203.* The following shall be the duties of the treasurer of the union :—

No. 1. To receive all moneys tendered to be paid to the guardians, and to place the same to their credit.

No. 2. To pay out of any moneys for the time being in his hands, belonging to the guardians, all orders for money which shall be drawn upon him, in conformity with Art. 84, when the same shall be presented at the house or usual place of business of the treasurer, and within the usual hours of business.

No. 3. To keep an account, under the proper dates, of all moneys received and paid by him as such treasurer, to balance the same at Lady-day and Michaelmas in every year, and to render an account of such moneys to the guardians when required by them to do so.

No. 4. Whenever there are not funds belonging to the guardians in his hands, as treasurer of the union, to report in writing the fact of such deficiency to the commissioners.

No. 5. To submit a proper account, together with the bonds of any officers which may be in his custody, to the auditor at the place of audit, and at the time and in such manner as may be required by the regulations of the commissioners.

No. 6. To receive the moneys payable to him as treasurer of the union under any Act of parliament or other authority of law.

*Art. 204.* Provided that the regulations in Art. 203 shall not be applicable to cases in which the governor and company of the Bank of England may act as treasurer of the union or bankers to the guardians.

*Art. 174.* If no remuneration or salary be expressly assigned to the treasurer, the profit arising from the use of money from

time to time left in his hands shall be deemed to be the payment of his services.

*Relieving Officer.*

The board of guardians shall also appoint relieving officers for the different districts into which the union may be divided for general relief. *Ante*, p. 347, Art. 153; and see Art. 152.

And by the consolidated order,—

*Art. 215.* The following shall be the duties of a relieving officer :—

No. 1. To attend all ordinary meetings of the guardians, and to attend all other meetings when summoned by the clerk.

No. 2. To receive all applications for relief made to him within his district, or relating to any parish situated within his district, and forthwith to examine into the circumstances of every case, by visiting the house of the applicant (if situated within his district), and by making all necessary inquiries into the state of health, the ability to work, the condition and family, and the means of such applicant, and to report the result of such inquiries in the prescribed form to the guardians at their next ordinary meeting, and also to visit from time to time as requisite all paupers receiving relief, and to report concerning the same as the guardians may direct.

No. 3. In any case of sickness or accident requiring relief by medical attendance, to procure such attendance by giving an order on the district medical officer, in the form (V.) hereunto annexed, or by such other means as the urgency of the case may require.

No. 4. To ascertain from time to time from the district medical officer the names of any poor persons whom such medical officer may have attended or supplied with medicines, without having received an order from himself to that effect.

No. 5. In every case of a poor person receiving medical relief, as soon as may be, and from time to time afterwards, to visit the house of such person, and, until the next ordinary meeting of the guardians, to supply such relief (not being in money) as the case on his own view, or on the certificate of the district medical officer, may seem to require.

No. 6. In every case of sudden or urgent necessity, to afford such relief to the destitute person as may be requisite, either by giving such person an order of admission into the workhouse, and conveying him thereto if necessary, or by affording him relief out of the workhouse, provided that the same be not given in money, whether such destitute person be settled in any parish comprised in the union or not.

No. 7. To report to the guardians at their next ordinary meeting all cases reported to him by an overseer in conformity with Art. 218, and to obey the directions of the guardians with reference to the relief administered in such cases.

No. 8. To perform the duties with respect to pauper apprentices prescribed by Arts. 60, 61, and 62.

No. 9. To give all reasonable aid and assistance at the request of any other relieving officer of the union, by examining into the case of any applicant for relief, or administering relief to any pauper whose name has been entered on the books of such other relieving officer, and who may be within his own district.

No. 10. Duly and punctually to supply the weekly allowances of all paupers belonging to his district, or being within the same, and to pay or administer the relief of all paupers within his district to the amount and in the manner in which he may have been lawfully ordered by the guardians to pay or administer the same.

No. 11. To visit, relieve, and otherwise attend to non-settled poor, being within his district, according to the directions of the guardians, whose officer he is, and in no other way, subject always to the obligation imposed on him in cases of sudden or urgent necessity.

No. 12. To set apart one or more pages in his out-door relief list, in which he shall duly and punctually enter up the payments made by authority of his own board of guardians to non-settled poor, and to take credit for such payments in his receipt and expenditure book.

No. 13. To present his weekly accounts to the clerk for his inspection and authentication before every ordinary meeting of the guardians, and to the guardians, at such meeting, for their approval.

No. 14. To submit to the auditor of the union all his books, accounts, and vouchers, at the place of audit, and at such time, and in such manner, as may be required by the regulations of the commissioners.

No. 15. To assist the clerk in conducting and completing the annual or other election of guardians, according to the regulations of the commissioners.

No. 16. To observe and execute all lawful orders and directions of the guardians applicable to his office.

*Art. 216.* The relieving officer shall in no case take credit in his accounts, or enter as paid, or given by way of relief, any money or other articles which have not been paid or given previously to the taking of such credit, or the making of such entry; and he shall not take credit in such accounts for any money paid to any tradesman or other person, with-

out producing, at the next ordinary meeting of the guardians, a bill from such tradesman or person with voucher of payment.

*Medical Officer.*

*Appointment, 359.*

*For what time, 359.*

*Qualification, 361.*

*Maximum area and population of medical districts, 362.*

*Rates of payment in surgical and midwifery cases, 362.*

*Substitutes for medical officers, 364.*

*Mode of obtaining medical relief by permanent paupers, 364.*

*Duties of the medical officer generally, 365.*

*Duties of a district medical officer, 365.*

*Duties of the medical officer of the workhouse, 366.*

*Appointment.]* By the consolidated order, Art. 153, the guardians shall appoint a medical officer for the workhouse, and a district medical officer.

*Art. 157.* The guardians shall not, by advertisement, or other public notice, printed or written, invite tenders for the supply of medicines, or for the medical attendance on the paupers of the union, unless such advertisement or notice shall specify the district or place for which such supply of medicines and such attendance is required, together with the amount of salary or other remuneration.

*For what time.]* By an order of the Poor Law Board (25th May, 1857), it is directed,—

*Art. 1.* Every medical officer of a workhouse duly qualified at the time of his appointment according to the regulations of the Poor Law Board then in force, shall hold his office until he shall die, or resign, or be proved to be insane by evidence which the Poor Law Board shall deem sufficient, or become legally disqualified to hold such office, or be removed by the Poor Law Board.

*Art. 2.* Every district medical officer duly qualified as aforesaid at the time of his appointment, and then being, or within two months after his appointment becoming resident within the district for which he shall be appointed to act, shall hold his office until he shall die, or resign, or be proved to be insane in the same manner as in the previous Article, or become legally disqualified to hold such office, or be removed by the said board, or cease to reside within such district.

*Art. 3.* If a medical officer not fully qualified, or not resident within his district at the time of his appointment, or within two months thereof, shall afterwards complete his qualification, or become resident within such district, as the case may be, the guardians may, upon such completion of his



qualification or becoming resident respectively, after giving such notice as would be necessary in respect of an appointment in case the office were vacant, pass a resolution empowering such medical officer to hold his office for the time specified in Art. 2, and if they transmit a copy of such resolution to the Poor Law Board, and if that board consent, such officer, being so duly qualified and resident, shall be entitled thenceforth to hold such office accordingly.

*Art. 4.* If the guardians shall elect a district medical officer, whether duly qualified as aforesaid or otherwise, not residing within his district at the time of his appointment, and not becoming resident therein within two months after it, or shall elect as such medical officer a person not duly qualified as aforesaid, but licensed to practise medicine, and residing within his district at such time, the guardians shall employ as a district medical officer such person not residing within his district, or such person not duly qualified as aforesaid (as the case may be), for such time only as the Poor Law Board shall approve of or direct; and when the guardians shall make any such election as in this Article specified, they shall cause a special minute to be made and entered on the usual record of their proceedings, stating the reasons which in their opinion make it necessary to employ such person not residing within the district in which he is to act, or not duly qualified as aforesaid, and forthwith transmit a copy of such minute to the said board for their consideration.

*Art. 5.* Where a change in the extent of the district of a medical officer shall be deemed necessary for the more convenient supply of medical relief to the poor, or otherwise for the general benefit of the union or incorporation, and he shall decline to acquiesce therein, the guardians may, with the consent of the Poor Law Board, but not otherwise, and after six months notice in writing, signed by their clerk, given to such medical officer, determine his office.

*Art. 6.* Provided, that nothing herein contained shall prevent the guardians in any case of emergency, or under any special circumstances, from appointing one or more medical officers to act temporarily for such time and upon such terms as the Poor Law Board shall approve.

*Art. 7.* When any medical officer shall cease to hold his office under any of the provisions herein contained, the guardians shall proceed to make a new appointment to the office rendered vacant, in the manner prescribed by the regulations of the Poor Law Commissioners or Poor Law Board in force at the time, unless by reason of any change in the extent of the district such office as previously constituted shall become unnecessary.

*Art. 8.* If the guardians shall have given notice to determine the continuance in office of any medical officer under this

order, and the Poor Law Board shall have consented thereto, the guardians may appoint a successor to such officer at any time subsequent to their receiving such consent; provided, that nothing herein contained shall prevent such officer from being re-appointed if otherwise eligible.

*Qualification.*] By *Art. 168*, no person shall hold the office of medical officer unless he possess one of the four following qualifications; that is to say,—

1. A diploma or degree as surgeon from a royal college or university in England, Scotland, or Ireland, together with a degree in medicine from a university in England, legally authorized to grant such degree, or together with a diploma or licence of the Royal College of Physicians of London.

2. A diploma or degree as surgeon from a royal college or university in England, Scotland, or Ireland, together with a certificate to practise as an apothecary from the Society of Apothecaries of London.

3. A diploma or degree as surgeon from a royal college or university in England, Scotland, or Ireland, such person having been in actual practice as an apothecary on the first day of August, one thousand eight hundred and fifteen.

4. A warrant or commission as surgeon or assistant surgeon in Her Majesty's navy, or as surgeon or assistant surgeon or apothecary in Her Majesty's army, or as surgeon or assistant surgeon in the service of the Honourable East India Company, dated previous to the first day of August, one thousand eight hundred and twenty-six.

*Art. 169.* Provided always, that if it be impracticable, consistently with the proper attendance on the sick poor, for the guardians to procure a person residing within the district in which he is to act, and duly qualified in one of the four modes recited in *Art. 168*, to attend on the poor in such district, or that the only person resident within such district, and so qualified, shall have been dismissed from office by the commissioners, or shall be unfit or incompetent to hold the office of medical officer, then and in such case the guardians shall cause a special minute to be made and entered on the usual record of their proceedings, stating the reasons which, in their opinion, make it necessary to employ a person not qualified as required by *Art. 168*, and shall forthwith transmit a copy of such minute to the commissioners for their consideration; and the commissioners may permit the employment by such guardians of any person duly licensed to practise as a medical man, although such person be not qualified in one of the four modes required by *Art. 168*.

*Art. 170.* Provided also, that the guardians may, with the consent of the commissioners, continue in office any medical

officer duly licensed to practise as a medical man already employed by any such guardians, although such medical officer may not be qualified in one of the four modes required by Art. 168.

*Maximum area and population of medical districts.]* By Art. 158, the guardians may from time to time divide the union into districts for general and medical relief, with the consent of the commissioners; and on any change in the division of the union into districts for general and medical relief, or in the assignment of relieving officers and medical officers to such districts, the clerk shall report every such change to the commissioners for their approbation.

*Art. 159.* The guardians shall not assign to any medical officer a district which exceeds in extent the area of fifteen thousand statute acres, or which contains a population exceeding the number of fifteen thousand persons, according to the then last enumeration of the population published by authority of parliament.

*Art. 160.* Provided that if it be impracticable, consistently with the proper attendance on the sick poor, for the guardians to divide the union into districts containing respectively an area and population less than is specified in Art. 159, then and in such case the guardians shall cause a special minute to be made and entered on the usual record of their proceedings, stating the reasons which in their opinion make it necessary to form a district exceeding the said limits, and shall transmit a copy of such minute to the commissioners for their consideration, and if the commissioners signify their approval thereof to such guardians, then and in such case, but not otherwise, such guardians may proceed to assign the said district to a medical officer.

*Art. 161.* Provided also, that the limit of 15,000 statute acres, prescribed in Art. 159, shall not apply to any medical district situate wholly or in part within the principality of Wales; but no medical district situate wholly or in part within that principality shall be assigned to any medical officer residing more than seven miles from any part of any parish included within such district, unless such district shall have been specially sanctioned by the commissioners in the same manner as is directed in Art. 160.

*Rates of payment in surgical and midwifery cases.]* By the same consolidated order, Art. 177, no salary of any district medical officer shall include the remuneration for operations and services of the following classes performed by such medical officer in that capacity for any out-door pauper, but

such operations and services shall be paid for by the guardians, according to the rates specified in this article.

1. Treatment of compound fractures of the thigh . . . . .	}	£ s. d.
2. Treatment of compound fractures or compound dislocations of the leg .		
3. Amputation of leg, arm, foot, or hand . . . . .		
4. The operation for strangulated hernia		
5. Treatment of simple fractures or simple dislocations of the thigh or leg . . . . .	}	3 0 0
6. Amputation of a finger or toe . . . . .		
7. Treatment of dislocations or fractures of the arm . . . . .	}	1 0 0

The above rates shall include the payment for the supply of all kinds of apparatus and splints.

*Art. 178.* Provided that except in cases of sudden accident immediately threatening life, no medical officer shall be entitled to receive such remuneration for any amputation, unless he shall have obtained at his own cost the advice of some member of the Royal College of Surgeons of London, or some fellow or licentiate of the Royal College of Physicians of London, before performing such amputation, and unless he shall also produce to the guardians a certificate from such member of the Royal College of Surgeons, or such fellow or licentiate, stating that in his opinion it was right and proper that such amputation should be then performed.

*Art. 179.* Provided also, that if in any case the patient has not survived the operation more than thirty-six hours, and has not required and received several attendances after the operation by the medical officer who has performed the same, such medical officer shall be entitled only to one half of the payments respectively prescribed above.

*Art. 180.* Provided also, that if several of the fees specified in *Art. 177* become payable with respect to the same person at the same time, and in consequence of the same cause or injury, the medical officer shall be entitled only to one of such fees, and if they be unequal, to the highest.

*Art. 181.* In any surgical case, not provided for in *Art. 177*, which has presented peculiar difficulty, or required and received long attendance from the district medical officer, the guardians may make to the said medical officer such reasonable extra allowance as they may think fit, and the commissioners may approve.

*Art. 182.* In cases in which any medical officer, either for the workhouse or a district, shall be called on by order of a person legally qualified to make such order, to attend any

requiring medical attendance within the district of the union assigned to him, and according to his agreement to supply the requisite medicines to such persons, whenever he may be lawfully required to furnish such attendance or medicines by a written or printed order of the guardians, or of a relieving officer of the union, or of an overseer.

No. 2. On the exhibition to him of a ticket, according to Art. 76 (see *ante*, p. 365), and on application made on behalf of the party to whom such ticket was given, to afford such medical attendance and medicines as he would be bound to supply if he had received in each case an order from the guardians to afford such attendance and medicines.

No. 3. To inform the relieving officer of any poor person whom he may attend without an order.

No. 4. To make a return to the guardians at each ordinary meeting, in a book prepared according to the form marked (P.), and to insert therein the date of every attendance, and the other particulars required by such form, in conformity with Art. 205, No. 4, *ante*, p. 365.

Provided, however, that the medical officer may, with the consent of the guardians, but not otherwise, make the entries which he is directed to make in such book or detached sheets of paper, according to the same form, and cause the same to be laid before the guardians at every ordinary meeting, instead of such book; and the guardians shall, in that case, cause such sheets to be bound up at the end of the year.

*Duties of the medical officer of the workhouse.] By Art. 207, the following shall be the duties of the medical officer for the workhouse :—*

No. 1. To attend at the workhouse at the periods fixed by the guardians, and also when sent for by the master or matron.

No. 2. To attend duly and punctually upon all poor persons in the workhouse requiring medical attendance, and according to his agreement to supply the requisite medicines to such persons.

No. 3. To examine the state of the paupers on their admission into the workhouse, and to give the requisite directions to the master according to Arts. 91 & 92. See *ante*, p. 155.

No. 4. To give directions and make suggestions as to the diet, classification, and treatment of the sick paupers, and paupers of unsound mind, and to report to the guardians any pauper of unsound mind in the workhouse whom he may deem to be dangerous, or fit to be sent to a lunatic asylum.

No. 5. To give all necessary instructions as to the diet or treatment of children and women suckling children, and to vaccinate such of the children as may require vaccination.

No. 6. To report in writing to the guardians any defect in the diet, drainage, ventilation, warmth, or other arrangements

of the workhouse, or any excess in the number of any class of inmates, which he may deem to be detrimental to the health of the inmates.

No. 7. To report in writing to the guardians any defect which he may observe in the arrangements of the infirmary, and in the performance of their duties by the nurses of the sick.

No. 8. To make a return to the guardians, at each ordinary meeting, in a book prepared according to the Form (Q.), and to insert therein the date of every attendance, in conformity with Art. 205, and the other particulars required by such form to be inserted by the medical officer, and to enter in such return the death of every pauper who shall die in the workhouse, together with the apparent cause thereof.

No. 9. To enter in the commencement of such book, according to the Form marked (R.), the proper dietary for the sick paupers in the house in so many different scales as he shall deem expedient.

*District Auditor.*

<i>Formation of the district,</i> 367.	<i>Audit, how,</i> 371.
<i>Election of district auditors,</i> 367.	<i>Taxation of attorneys' and solicitors' bills of costs.</i> 373.
<i>Deputy auditor,</i> 370.	<i>Balances, &amp;c., how recovered and applied,</i> 374.
<i>Powers of poor law board over auditors,</i> 370.	<i>Remedy for party aggrieved by audit,</i> 375.
<i>Cessation of powers of jus- tices to audit,</i> 370.	<i>Examination and closing of accounts,</i> 377.
<i>Notice of audit,</i> 370.	<i>Auditing of accounts,</i> 381.
<i>Closing and inspection of ac- counts,</i> 371.	

*Formation of the district.]* By stat. 7 & 8 Vict. c. 101, s. 32, it shall be lawful for the poor law commissioners from time to time, by order under their hands and seal, to combine the parishes and unions in England and Wales into districts for the audit of accounts, and from time to time to add any parish or union to any such district, or separate any parish or union therefrom.

*Election of district auditors.]* And the chairman and vice-chairman of each board of guardians, or if there be no chairman or vice-chairman, then some two of their number to be selected by the guardians, or if there be no such body, then some two of the overseers to be selected by the overseers

respectively acting within the district, shall elect, at the time and in the manner to be prescribed by the commissioners, a person to be the auditor of the district; but in any case in which there are two vice-chairmen appointed in any board of guardians, such board of guardians shall select one of the vice-chairmen who shall vote in the election of such auditors.

*Ib.*

The following is the mode in which the election of a district auditor is conducted :—

*Art. 2.* And we do hereby prescribe the time and manner in which such auditor shall be elected, as follows; that is to say,

On some day within thirty days after the happening of any vacancy in the said office, a poor law inspector, to be determined by the poor law board, shall cause an advertisement to be inserted in one of the newspapers published in the cities of London or Westminster, and in two or more newspapers published within the counties in which the said unions or some of them are situated, giving notice of the vacancy, and inviting persons desirous to become candidates for the office of auditor, to send to him, at some place to be therein specified, their names in full, their profession or occupation, their age and residence, within a time not exceeding fourteen days from the first insertion of such notice in such newspapers as aforesaid.

*Art. 3.* On the expiration of the said term of fourteen days, the poor law inspector shall cause a list to be made of such persons as may have duly offered themselves as candidates, and may have forwarded the information hereinbefore required; and such poor law inspector shall send copies of such list, with the other particulars hereinbefore required, to each of the several chairmen and vice-chairmen of the boards of guardians of the before-mentioned unions respectively, and to such other persons as may be qualified to vote at the election of the auditor for the district, and shall request each elector to return to him in some writing signed by such elector on or before a day to be specified by such poor law inspector, being not less than seven days, nor more than fourteen days, after the date of such list, the name of the candidate in such list for whom such elector votes.

*Art. 4.* On the day next after the day specified by such poor law inspector for the return of such names, the said poor law inspector shall examine the returns then received by him, and shall cast up the numbers, and shall enter on the said list so made out by him as aforesaid, against the name of each candidate, the names of the several electors who shall have voted for such candidate.

*Art. 5.* If any candidate shall have obtained the majority of the votes of the said electors, the poor law inspector shall

certify in writing, at the foot of such list, that such candidate hath been duly elected the auditor for such district.

*Art. 6.* If no candidate have received the votes of the majority of the electors, the poor law inspectors shall again send the names of the two candidates who have received the greatest number of votes to each of the several electors, with a request that each elector will return, in writing, signed by him, the name of one of such two persons to the said poor law inspector, on or before a day to be specified, being not less than seven days, nor more than fourteen days, after the date of such request.

*Art. 7.* On the day next after the day specified for the second return, the poor law inspector shall examine the returns then received by him, and shall proceed, as on the former occasion, to cast up the number of the votes, and to enter the names of the persons voting, and to certify in writing that the candidate who then has the greater number of votes is elected the auditor of the district.

*Art. 8.* If on the return of the list first sent out by the said poor law inspector, it be found that no candidate has a majority of the votes of the electors, and that the votes are equal in favour of the three candidates who have received the largest number of votes, or in favour of any two of such three candidates, he shall forward on the second occasion the names of all such three candidates, and shall proceed as if the names of the candidates so sent were sent for the first time, except that in the event of there being an equality of votes on the second voting, the election shall be deemed to have failed, and proceedings shall take place as on a new vacancy.

*Art. 9.* If only one candidate shall offer himself to the poor law inspector, the name and address of such person shall be sent by such poor law inspector to all the persons qualified to vote as aforesaid, and such poor law inspector shall request such persons to inform him in writing, on or before a day to be specified, being not less than seven days, nor more than fourteen days, from the date of such request, whether such persons assent or object to such candidate being elected as an auditor; and if the greater number of the electors then entitled to vote shall signify their assent to the election of such person, but not otherwise, the said poor law inspector shall declare the candidate to be duly elected.

*Art. 10.* The poor law inspector shall cause copies of the list showing the names of the voters who shall have voted for each candidate, or in case of no contest, of the electors who shall have expressed their assent to the election of the person nominated, with the name of the person elected as auditor duly certified at the foot thereof, to be printed forthwith, and shall transmit to the guardians of the several unions printed copies thereof, and shall communicate to the person so elected



auditor the fact of his having been so elected, and shall advertise the result of the election in some one or more newspaper or newspapers published in the district.

*Deputy auditor.]* The poor law board may at any time, upon sufficient cause being shown to them, authorize any person, selected by the auditor, to act temporarily as his deputy, and shall communicate to the several unions and places forming his district, the name of the person so appointed to act as his deputy, and such person shall thereupon be empowered to act in all respects, and with the same authorities, and subject to the same duties and liabilities as the auditor himself is entitled or subject to. 11 & 12 Vict. c. 91, s. 10. And when any auditor shall die, resign, or be removed, or become incompetent to act, at any time when the audit of accounts of the parishes or unions within his district shall not be completed, the poor law board may, by order under their seal, appoint temporarily some other person to audit the accounts of the several parishes or unions which may then be ready to be audited; and such temporary auditor shall have the same powers and authorities, and shall be subject to the same obligations and duties as the ordinary auditor would have possessed or would have been subject to, and shall receive such remuneration as the said commissioners shall direct for the performance of his services herein. 12 & 13 Vict. c. 103, s. 8.

*Powers of poor law board over the auditors.]* And the said commissioners shall have all the powers with regard to the salaries of the said auditors to be charged in the poor rates, and to all other matters relating to auditors for such districts, as they have with regard to paid officers. *Id.*

But since this enactment, upon the occasion of the repeal of the corn laws, the auditors' salaries and the salaries of teachers in workhouse schools, and half of the medical officers' salaries, are paid out of funds annually voted by parliament for the purpose.

*Cessation of powers of justices to audit.]* In every district for which an auditor may be appointed under the provisions of this Act, the powers of justices of the peace, and of all other persons to examine, audit, allow, or disallow accounts, shall, so far as relates to any accounts which such auditor is authorized to examine and audit, cease, and the same is thereby repealed. *Id.* 37.

*Notice of audit.]* Such auditor shall give or send by post or otherwise to the overseers or other officers fourteen days' notice of the said audit. *Id.* s. 33. It shall also be advertised in some newspaper circulating in the county. 11 & 12 Vict. c. 91, s. 7.

*Closing and inspection of accounts.]* And seven clear days at least before the day fixed for the audit of accounts, the overseers or other officers employed in any parish in carrying the laws for the relief of the poor into execution, and every collector or assistant overseer acting for such parish, shall cause their rate-books and other accounts to be made up and balanced; and the books so made up shall forthwith be deposited at the house within the parish of some one of such overseers or other officers, or of such collector or assistant overseer, or at some other house within the parish; and notice shall forthwith be affixed at the usual place or places of giving parish notices, stating the time and place of audit, as notified by the auditor (*supra*), and the place where the books are deposited; and such books shall on each of such days be open between the hours of eleven and three, for the inspection of every person liable to be rated to the relief of the poor; and if any such overseer or other officer, collector, or assistant overseer neglect to make up such account, or alter such account, or allow it to be altered when so made up, or refuse to allow such inspection thereof, he shall be liable, on conviction thereof, to forfeit forty shillings; and if any such overseer or other officer, collector, or assistant overseer, refuse or wilfully neglect to affix such notice of audit, and of the time and place for the inspection of such accounts, as above provided, he shall be liable, on conviction thereof, to forfeit forty shillings. 7 & 8 Vict. c. 101, s. 33.

*Audit, how.]* It shall be lawful for every ratepayer in any parish or union to be present at the audit of the accounts relating to such parish or union, and to make any objection to any such accounts before such auditor; and it shall be lawful for any such auditor to require any person holding or accountable for any money, books, deeds, papers, goods, or chattels, relating to the poor's rate or the relief of the poor, to produce to such auditor his accounts and vouchers, and to make or sign a declaration with respect to such accounts; and so often as such person neglects or refuses to attend, either at the audit or any adjournment thereof, when so required by such auditor, or to produce to him such accounts or vouchers, or any of them, or to make or sign a declaration with respect to his accounts, if thereunto required by such auditor, he shall be liable, for every such refusal or neglect, to forfeit forty shillings, to be recovered as penalties and forfeitures under the said first-recited Act, or if he wilfully make or sign a false declaration in respect of such accounts he shall be liable to the penalties of perjury. *Id.* s. 33.

And every auditor appointed for such a district shall have full powers to examine, audit, allow, or disallow of accounts, and of items therein, relating to moneys assessed for and applicable to the relief of the poor of all parishes and unions

within his district, and to all other money applicable to such relief; and such auditor shall charge in every account audited by him the amount of any deficiency or loss incurred by the negligence or misconduct of any person accounting, or of any sum for which any such person is accountable, but not brought by him into account against such person, and shall certify on the face of every account audited by him any money, books, deeds, papers, goods or chattels, found by him to be due from any person. *Id.* s. 32. Where an auditor, in auditing the accounts of overseers, disallowed the costs paid by them in contesting an appeal against a rate, because they did so without previously obtaining the sanction of the vestry; but after the audit the vestry met, and the expense was sanctioned by them: it was holden that the previous sanction of the vestry was not necessary, and as it was not alleged that the overseers had acted *malá fide* or improvidently, the auditor had no right to disallow the expenses. *R. v. Street*, 22 Law J. 29, *m.*

And by stat. 11 & 12 Vict. c. 91, s. 5, where any overseer or officer shall be continuing in office at the time when the accounts are audited, the auditor shall certify as due such sums of money only as shall be disallowed or surcharged by him in the accounts so audited; but where the term of office of such overseer or officer shall have expired at the time when the accounts are audited, he shall ascertain the balance which he shall find to be then due on the accounts so audited, together with the sums (if any) which he shall have disallowed or surcharged, and shall give credit for all sums which shall be proved before him to have been paid in respect of such balance to the succeeding overseers or officers, or otherwise lawfully applied on behalf of the parish or union interested therein, before the date of his audit, and he shall certify, report, and recover, in the manner provided by law, the balance remaining due after such credit shall have been given; and every certificate made by any auditor, if made according to the forms set forth in the schedule hereunto annexed, or to the like effect, shall be deemed to be sufficient: provided always, that where the sum, or the aggregate of the sums disallowed by the auditor in the account of any officer, shall not amount to forty shillings, the same may be paid over with the balance due from such officer, instead of being paid to the treasurer.

The following are the forms of certificates:—

1. *Against an Accounting Officer.*

*I do hereby certify, that in the account of A. B., the [set out the name of the officer], of the parish of — [or of the — union], I have disallowed [or surcharged] the sum of —.*

*As witness my hand this — day of —, 18—.*

*M. N., auditor of the — district, which comprises the above-named parish or union.*

**2. Against a Person not an Accounting Officer.**

*I do hereby certify, that in the accounts of the — union [or of the parish of —], I have disallowed the sum of — as a payment illegally made out of the funds of such union [or parish], and I find that C. D. of — authorized the making of such illegal payment, and I do hereby surcharge the said C. D. with the same.*

*As witness my hand this — day of —, 18—.*

*M. N., auditor of the — district, which comprises the above-named union or parish.*

And any churchwarden, surveyor of the highways, overseer, or other officer of a parish or union, who shall wilfully authorize or make an illegal or fraudulent payment from the church-rate, highway-rate, or other public fund of a parish or union, or shall unlawfully make an entry in his accounts for the purpose of defraying or making up to himself or any other person the whole or any part of any sum of money unlawfully expended from the poor-rate, or disallowed or surcharged in the accounts of any parish or union by such auditor, shall, upon conviction thereof before any two justices, forfeit and pay for every such offence any sum not exceeding twenty pounds, and also treble the amount of such payment or of the sum so entered in his accounts. 7 & 8 Vict. c. 101, s. 32.

*Taxation of attorneys' and solicitors' bills of costs.]* On application of any overseer, or of any board of guardians, or of any attorney-at-law, it shall be the duty of the clerk of the peace of the county or place, or his deputy, if thereunto required, to tax any bill due to any solicitor or attorney in respect of business performed on behalf of any parish or union situate wholly or in part within such county or place; and the allowance of any sum on such taxation shall be *prima facie* evidence of the reasonableness of the amount, but not of the legality of the charge; and the clerk of the peace shall be allowed for such taxation after the rate to be fixed from time to time by the master of the crown office, and declared by an order of the said commissioners; and if any such bill be not taxed before it is presented to the auditor, the auditor's decision on the reasonableness as well as the legality of the charge shall be final. *Id.* s. 39. The master of the crown office in pursuance of this provision fixed the rate of allowance to the clerk of the peace in respect of such taxation; and the poor law commissioners, by an order dated the 21st November, 1844, declared, that the clerk of the peace of every county or place in England and Wales, shall be allowed for the

taxation of every bill due to any solicitor or attorney, in respect of business performed on behalf of any parish or union, after the rate of fourpence per sheet, or folio, of seventy-two words each.

*Balances, &c., how recovered and applied.]* When any such auditor has so certified any money, books, deeds, papers, goods or chattels, to be due from any person, he shall forthwith report the same to the said commissioners; and the person from whom any money is so certified to be due, shall within seven days pay or cause to be paid such money to the treasurer of the guardians of the union or parish, if there be any such treasurer; and in the case of a union, such money shall be applied by the guardians to the use of all or any of the parishes included in such union, according as all or any of such parishes may be interested in the sum so paid; and all books, deeds, papers, goods, and chattels, and (in the case where there is no treasurer as aforesaid) all moneys so certified to be due, shall be delivered over or paid within seven days of the same being certified, to the person or persons authorized to receive the same; and if any such money, books, deeds, papers, goods, or chattels, be not duly paid or delivered over as hereinbefore directed, the said auditor, or any auditor subsequently appointed, shall proceed, as soon as may be, to enforce the payment or delivering over of the same; and all moneys so certified to be due by such auditor, shall be recoverable as so certified from all or any of the persons making or authorizing the illegal payment, or otherwise answerable for such moneys, and shall be recovered on the application of such auditor, or of any such auditor subsequently appointed, or by any person for the time being entitled or authorized to receive the same, in the same manner as penalties and forfeitures may be recovered under the provisions of the said first-recited Act [4 & 5 W. 4, c. 76]; and the expenses attending such proceeding or recovery shall (except so far as the same may be paid by the persons against whom the proceedings have been taken) be repaid to such auditor by the guardians of the parish or union, or by the district board of the district to which the proceedings may respectively relate, and shall be charged in their accounts in such manner and in such proportions as the said commissioners may direct; and if any person from whom any such books, deeds, papers, goods, or chattels, may be due, neglect or refuse to deliver over the same to the person for the time being entitled or authorized to receive the same, the person so neglecting or refusing shall be liable, on the complaint of any such auditor for the time being, or of the person entitled or authorized to receive the same, to the penalties and proceedings provided in the case of overseers refusing or neglecting to pay and

deliver over to their successors any sum or sums of money, goods, chattels, and other things in their hands. *Id.* s. 32.

And by stat. 11 & 12 Vict. c. 91, s. 9, in any proceedings to be taken by an auditor, or by his attorney, before justices, to recover sums certified by him to be due, it shall be sufficient for him to produce a certificate of his appointment under the seal of the commissioners, and to state and prove that the audit was held, that the certificate was made in the book of account of the union or parish to which the same relates, and that the sum certified to be due had not been paid to the treasurer of the guardians of the union or of the parish, as the case may require, within seven days after the same had been so certified, nor within three clear days before the laying of the information,—of which non-payment a certificate in writing, purporting to be signed by the treasurer, shall be sufficient proof on the part of the auditor; and if at the hearing of such information it shall be proved that the said sum had been paid to the treasurer subsequently to the date of such last-mentioned certificate, the costs incurred by such auditor shall be paid by the party against whom the information shall be laid, unless he prove that notice of such payment had been given to the auditor twenty-four hours at least prior to the laying of the information.

*Remedy for party aggrieved by audit.]* If any person, aggrieved by any allowance, disallowance, or surcharge by any such auditor, require such auditor to state the reasons for the said allowance, disallowance, or surcharge, the auditor shall state such reasons in writing in the book of account in which the allowance, disallowance, or surcharge may be made; and it shall be lawful for every person aggrieved by such allowance, and for every person aggrieved by such disallowance or surcharge, if such last-mentioned person have first paid or delivered over to any person authorized to receive the same all such money, goods, and chattels as are admitted by his account to be due from him or remaining in his hands, to apply to the court of Queen's Bench for a writ of *certiorari* to remove into the said court the said allowance, disallowance, or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of *certiorari* for the removal of orders of justices of the peace; except that the condition of such recognizance shall be, to prosecute such *certiorari* at the costs and charges of such person, without any wilful or affected delay, and if such allowance, disallowance, or surcharge be confirmed, to pay to such auditor or his successor, within one month after the same may be confirmed, his full costs and charges, to be taxed according to the course of the said court, and except that the notice of the intended application, which shall contain a state-

ment of the matter complained of, shall be given to such auditor or his successor, who shall in return to such writ return a copy under his hand of the entry or entries in such book of account to which such notice shall refer, and shall appear before the said court, and defend the allowance, disallowance, or surcharge, so impeached in the said court, and shall be reimbursed all such costs and charges as he may incur in such defence out of the poor-rates of the union or parish respectively interested in the decision of the question, unless the said court make any order to the contrary; and that on the removal of such allowance, disallowance, or surcharge, the said court shall decide the particular matter of complaint set forth in such statement, and no other; and if it appear to such court that the decision of the said auditor was erroneous, they shall, by rule of the court, order such sum of money as may have been improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same; and they may also, if they see fit, by rule of the court, order the costs of the person prosecuting such *certiorari* to be paid by the parish or union to which such accounts relate, as to such court may seem fit: which rules of court respectively shall be enforced in like manner as other rules of the said court are enforceable. 7 & 8 Vict. c. 101, s. 35.

Or, it shall be lawful for any person aggrieved as aforesaid by any allowance, disallowance, or surcharge, in lieu of making application to the court of Queen's Bench for a writ of *certiorari*, to apply to the said commissioners to inquire into and to decide upon the lawfulness of the reasons stated by the auditor for such allowance, disallowance, or surcharge, and it shall thereupon be lawful for the said commissioners to issue such order therein, under their hands and seal, as they may deem requisite for determining the question. *Id.* s. 36. Or, by stat. 11 & 12 Vict. c. 91, s. 4, where any appeal shall be made to the said commissioners against any allowance, disallowance, or surcharge made by any auditor in the accounts of any guardians, overseers, or their officers, it shall be lawful for the said commissioners to decide the same according to the merits of the case; and if they shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, they may, by an order under their seal, direct that the same shall be remitted, upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge.

*Examination and Closing of Accounts.*

In respect to the examination, closing and auditing of union accounts and of the accounts of parishes in union, it is provided by the poor law commissioners' general order of accounts, dated 17th March, 1847, as follows :—

*Art. 18.* On the day of every ordinary meeting of the board of guardians, or on the day next before it, unless such day shall be Sunday, and then on the previous Saturday, the clerk shall examine the master's day book, and shall compare the entries of invoices with the invoices themselves, and shall see that, all the goods supplied are carried by the master to the proper accounts, and shall certify the correctness of the same by his initials. He shall also compare the entries of payments, in the receipt and payment account therein, with the vouchers, and ascertain that the master has debited this account with all sums received by him, and shall insert his initials at the foot of such account. And he shall inspect the other books required to be kept by the master by this order, so as to ascertain that they are properly kept.

The clerk shall also examine the weekly accounts in each relieving officer's out-door relief list, abstract of the out-door relief list, and receipt and expenditure book, so as to ascertain the accuracy of the entries therein, and shall certify the correctness of the same by his initials.

And the master and relieving officer shall respectively, under the direction of the board of guardians, present their books and accounts to the clerk for his examination on such day as aforesaid.

*Art. 19.* The overseers of every parish, and every collector acting for any parish, shall make up and balance to the 25th day of March and the 29th day of September in each year, all such books as they are required, by the Act passed in the 8th year of the reign of Her Majesty Queen Victoria, intituled, "*An Act for the amendment of the Laws relating to the Poor in England*," to deposit for the inspection of the rate-payers at some house within the parish seven days at least before the audit.

*Art. 20.* All the accounts of the union and of the officers of the union shall be closed at the end of every half-year, that is to say, up to the 25th day of March and the 29th day of September in each year, or the end of the week nearest thereto. And the several officers keeping such accounts shall forthwith lay, or cause to be laid, their respective accounts so closed before the board of guardians.

*Art. 21.* The master of the workhouse shall, at the end of every half-year, allow each relieving officer to inspect the indoor relief list for the half-year last expired.



And each of the relieving officers shall, within fourteen days after the end of the half-year, inspect the names entered in such in-door relief list, and shall affix a mark in red ink against the name of every pauper who shall have been entered in the out-door relief list in the course of the said half-year.

*Art. 22.* The clerk or medical officer in possession of the district medical relief books shall, at the end of every half-year, allow each of the relieving officers to inspect such books; and each of the relieving officers shall, within fourteen days after the end of the half-year, inspect the names in such books, and shall affix a mark in red ink against the name of every pauper who shall not have received any other relief during the last half-year than medical relief.

*Art. 23.* The clerk shall, under the direction of the board of guardians, prepare from the accounts of the union,—1. A statistical statement showing the number of paupers of all classes actually relieved in the course of the last half-year, and the other particulars, according to the form and directions in the said Schedule B., numbered 16; and—2. A financial statement showing the accounts of the union for the last half-year in the form in the said Schedule B., numbered 17; which statements the clerk shall submit to the auditor at the time of his auditing the union accounts.

The auditor, if satisfied of the correctness of such statements, shall sign the same; and after they have been signed by the auditor, the clerk shall transmit them to the poor law commissioners, and shall make a duplicate of the financial statement, which shall also be signed by the auditor, and shall be preserved by the clerk for the use of the board of guardians.

*Art. 24.* The clerk shall, as soon as he shall receive notice from the auditor of the day or days appointed by him for the auditing of the half-yearly accounts of the union, and the several parishes comprised therein, cause the following notice to be affixed on the external gate or door of every workhouse in the union, or at some other place or places where union notices are usually affixed, and shall continue the same so affixed until the audit is completed:—

“ ——— Union.

“ Notice is hereby given, that the half-yearly statement of the accounts of this union, together with the relief order book and the ledgers, will, on the ——— day of ———, be deposited at ———; and such statements and books will be open to be inspected, examined, and copied by any owner of property or ratepayer in the said union, at any reasonable hour in the day time, when the board of guardians is not sitting, until the ——— day of ———; and that on the last-mentioned day, at the hour of ———, the accounts of the union will be audited by ———, the auditor of the district comprising this union, at ———, when

and where every such owner or ratepayer in the union, who may have any objection to any matter contained in the above-mentioned accounts, may attend, and prefer his objection, and the same will be heard by the auditor.

“ Dated ———.

——— “ Clerk to the Board of Guardians.”

*Art. 25.* The clerk shall, three clear days before the day appointed for auditing the union accounts, deposit the said half-yearly statement of the accounts of the union, together with the relief order book and ledgers, in the board room of the guardians of the union, or such other place as the board of guardians may appoint, and shall permit the said statement, book, and ledgers to be inspected, examined, and copied by any ratepayer or owner of property in the union, in the presence of the clerk or some other person approved of by the board of guardians, at any reasonable hour in the day time, when the board of guardians shall not be sitting, after the said statement, book, and ledgers shall be so deposited, and previous to the day appointed for the auditing thereof.

*Art. 26.* In case the auditing of any of the said union or parish accounts shall be adjourned for any longer period than from day to day, the clerk, on receiving from the auditor notice thereof, shall affix, in manner aforesaid, notice of the time and place of such adjournment, and of the accounts remaining to be audited, as often as such adjournment shall be made.

*Art. 27.* Within fourteen days after the 25th day of March and the 29th day of September in every year, the clerk, without waiting for the completion of the said statements or for the audit, shall transmit to the poor law commissioners the following particulars for the half-year just ended, as computed by him at the time :—

1. Total amount of out-door relief for the whole union in the half-year just ended.
2. Cost of in-maintenance of paupers in one sum for the whole union in the half-year just ended.
3. Amount of the cost of maintenance of workhouse establishment, salaries, and all other common charges, distributed according to the averages for the time being.
4. Amount of any salaries paid by the guardians not charged according to the averages.
5. Amount of principal of loans repaid, and the interest thereon.

*Art. 28.* Within fourteen days after the conclusion of the audit of the accounts of the half-year ending the 25th day of March in every year, the clerk shall make up in duplicate, from the balance sheets of the receipts and payments of the

overseers, an abstract of the separate accounts of each parish, for the year ending on such 25th day of March, according to the form and directions given in the said Schedule B., numbered 18; and one copy of such yearly abstract shall be signed by the clerk, and transmitted to the poor law commissioners, and the other copy, signed also by the clerk, shall be laid before the board of guardians, and preserved with the papers belonging to the union.

*Art. 29.* Every master of a workhouse shall, within seven days after the end of each half-year, insert in the proper columns, according to the form in Schedule B., numbered 19, called the parochial list and statement of account for every parish in the union, or, with the consent of the board of guardians, in a separate list containing similar columns, to be called the parochial list of in-door poor, the name of every pauper chargeable to every such parish during the previous half-year, together with the number of days each pauper has been maintained in the workhouse; and every relieving officer shall, within fourteen days after the end of each half-year, enter in the proper columns of the said parochial list for every parish in his district, or, with the consent of the board of guardians, in a separate list containing similar columns, to be called the parochial list of out-door poor, the name of every pauper contained in the out-door relief lists for the previous half-year, together with the amounts of relief in money and in kind charged as given to each pauper.

Such parochial lists, when filled up by the master and relieving officers respectively, shall be delivered by them to the clerk, who shall examine the entries made therein, and shall certify to the accuracy thereof by his signature. The clerk shall also make out, in the form given at the foot of such parochial list, a complete statement of the account of each parish with the union, and shall sign the same.

*Art. 30.* The relieving officers of the union shall, within thirty days after the end of each half-year, under the direction of the board of guardians, or of the clerk, deliver a copy of each of such lists and statement for every parish in his district to the overseers thereof, who shall lay the same before the next vestry meeting, and preserve the same with the parish papers.

*Art. 31.* The guardians may, if they think fit, pay to each officer who has not been removed or suspended from his or her office, and who is entitled to receive from them payment of any salary, whether by way of annual stipend, poundage, or other emolument, on account of such salary, the amount which may be due at the expiration of every quarter, provided the accounts of such officer shall have been presented by him or her to the board of guardians duly made up. The guardians may, however, if they think fit, defer the payment of

the salary of any officer until his or her accounts shall have been allowed by the auditor.

*Auditing of Accounts.*

**Art. 32.** Every auditor shall audit the accounts of all the unions in his district, and of the parishes comprised therein, once in every half-year; that is to say, as soon as may be after the 25th day of March and the 29th day of September, respectively. Provided always, that if the auditor shall see fit, in any special case, with the consent of the poor law commissioners, to hold an extraordinary audit, either of the whole or of any portion of the accounts of any union or parish, in addition to the ordinary audit, at any time between such two days, it shall be the duty of any person who would be or would have been accountable at the ordinary audit to account at such special audit in like form and manner as at such ordinary audit, so far as the same shall be applicable to such special audit; and the surcharge, allowance, disallowance, or decision of the auditor on any item or other matter, at such special audit, shall, so far as regards the provisions and regulations which may be contained in any order of the poor law commissioners, have the same effect as if the same were made or given at the ordinary audit of the accounts of such union or parish.

**Art. 33.** The auditor shall give to the clerk to the guardians fourteen days' notice in writing of the time and place, on and at which he intends to commence the audit of the accounts of the union, and of the parishes therein.

**Art. 34.** The officers of the union, and of the parishes in the union, who by law are bound to account to such auditor, shall attend at the time and place appointed by him for the audit of their accounts, and shall submit to the auditor all books, documents, bills, and vouchers containing or relating to their accounts; and the same shall at the time of the audit be open to the inspection of any owner of property or ratepayer interested in such accounts, but to such extent and in such manner only as will not in the judgment of the said auditor interfere with the audit.

**Art. 35.** In auditing the accounts, the auditor shall see that they have been kept and are presented in proper form; that the particular items of receipt and expenditure are stated in detail, and that the payments are supported by adequate vouchers and authority; and he shall ascertain whether all sums received, or which ought to have been received, are brought into account; and he shall examine whether the expenditure is in all cases such as might lawfully be made; and he shall reduce such payments and charges as are exorbitant,

and disallow and strike out such as are contrary to the orders, rules, and regulations of the poor law commissioners, or are not otherwise ordered by law.

*Art. 36.* The auditor shall examine and collate the several books and papers of account of the several accounting parties; and shall ascertain that the several entries correspond with and balance each other, where such balance may be required.

*Art. 37.* The auditor shall compute the said accounts so as to verify the arithmetical accuracy thereof, and the balance due to or from the officers rendering the same at the time of the audit; and he shall state the balance in words at length, and certify the same by his signature or initials, and add the date of the audit.

*Art. 38.* The auditor shall, at each audit, compare the balance sheet hereinbefore directed to be delivered to him by the overseers of every parish with the entries in the book of receipts and payments of the overseers; and having certified by his signature or initials at the foot of such balance sheet that it is in conformity with the said book, shall deliver such balance sheet to the clerk to the board of guardians, who shall preserve it, together with the other balance sheets of the same half-year, with the books and papers of the guardians.

*Art. 39.* The auditor shall receive any objection made by a ratepayer or any person aggrieved against the accounts undergoing audit, or any item or charge therein, or any vouchers or authority for the same, and shall examine into the merits of such objection, and make a decision respecting the same.

*Art. 40.* If the auditor shall doubt the correctness of any account, or any item or charge in any account, he shall require the officer rendering the account, or any other person holding or accountable for any money, books, deeds, or chattels, relating to the poor-rates or the relief of the poor, to appear before him, and shall call upon such person to produce any accounts, books, or papers which he may lawfully require; and he shall examine such officer or person, and accounts, books, and papers as may appear or be produced before him, respecting such account, item, or charge.

*Art. 41.* If the auditor find that any money, goods, or chattels belonging to the union, or any parish therein, have been purloined, embezzled, wasted, or misapplied, or that any deficiency or loss has been incurred by the negligence, or misconduct of any officer or other person accounting, and shall surcharge such officer or person with such amount or value in his account, he shall submit a statement of such amount or value to the board of guardians as soon as he conveniently can do so.

*Art. 42.* The auditor having audited the several accounts in the ledger, shall sign a certificate at the foot of the balance sheet therein, to the following effect:—

"I have examined the several accounts of which the foregoing is the balance sheet, and I have compared the several payments credited to the treasurer with the vouchers, and I hereby certify that the entries appear to be correct and legal. And that [when the balance in the treasurer's book does not agree with the balance in the ledger], subject to the explanation below [the difference to be explained at the foot of the certificate], the balance of the treasurer's account, viz., £——, agrees with the balance which by his own book appears to have been in his hands at the time of closing such account.

"Dated ——.

"(Signed) ——,

"Auditor."

And in the other books the auditor shall make a note or mark of his having audited the same.

*Art. 43.* The auditor shall at the close of each audit of the accounts of the unions in his district, transmit to the poor law commissioners a statement, in the form numbered 38, Schedule E., of the books directed by this order to be kept by the union officers, showing which, if any, is not kept at all, or is imperfectly kept.

*Art. 44.* The auditor shall, at the close of the audit of the accounts of the unions in his district next after the 25th day of March, in every year, transmit to the poor law commissioners a statement, in the form numbered 39, Schedule E., setting forth the name of each union officer and collector of poor rates in his district required to give a bond, and whether such bond, together with any certificate or proof that each of the sureties named therein is living, and is not bankrupt or insolvent, was produced to him at such audit; and also, in the column headed "observations," stating any defects in such securities.

And the auditor shall, at the close of such audit of the accounts of each union, report to the board of guardians thereof the fact of such bonds and certificates having been produced to him, together with any defects in such securities.

*Art. 45.* The personal representatives of an officer accountable under this order dying before the half-yearly audit of his accounts, shall, so far as they may be by law required, account, in conformity with the provisions herein contained, in the place of such deceased officer; and all regulations affecting the accounts of such officer shall, so far as is otherwise lawful, affect the accounts of the personal representatives of such officer.

*Art. 46.* If any person, being clerk to a board of guardians, master of the workhouse, or collector appointed by the guardians, or relieving officer accountable under this order, shall resign his office or be removed therefrom before the audit of his accounts, such person shall lay before the board of guardians, at a time to be fixed by them, a true and complete

account of all moneys, matters, and things committed to the charge of, or collected, received, held, or distributed by such person on behalf of the union, or any parish therein, in such form as he would have had to produce them before the auditor at the end of the current half-year if he had so long continued in office ; and shall deliver over all balances, books, papers, matters, and things in his hands, to the board of guardians, or to the person whom they may appoint to receive the same, subject always to the liability of such person to account to the auditor at an audit, and without prejudice to the power of the auditor to allow or disallow the account of such person or any charge therein, or to surcharge him in respect of any charge to which he might be liable.

*Art. 47.* Every person voluntarily undertaking to fulfil either wholly or in part the duties of any officer affected by this order, shall, so far as relates to the accounts prescribed by this order to be kept or presented by any such officer, keep and present such accounts in the same form and manner as any such officer is by this order directed to keep and present such accounts.

*Art. 48.* The clerk shall, at all reasonable times, at the request of any owner of property or ratepayer in the union, permit him to inspect the statements of the union or parish accounts for the twelve months prior to the last audit.

### 3. OFFICERS OF THE WORKHOUSE.

*Chaplain, 384.*

*Master, 385.*

*Matron, 388.*

*Schoolmaster and school-*  
*mistress, 389.*

*Nurse, 390.*

*Porter, 390.*

*Superintendent of out-door*  
*labour, 391.*

#### *Chaplain of Workhouse.*

By the consolidated order, *Art. 171*, no person shall hold the office of chaplain under this order without the consent of the bishop of the diocese to his appointment, signified in writing.

*Art. 211.* The following shall be the duties of the chaplain :—

No. 1. To read prayers and preach a sermon to the paupers and other inmates of the workhouse on every Sunday, and on Good Friday and Christmas Day, unless the guardians, with the consent of the commissioners, may otherwise direct.

No. 2. To examine the children, and to catechise such as belong to the Church of England, at least once in every month, and to make a record of the same, and state the dates of his

attendance, the general progress and condition of the children, and the moral and religious state of the inmates generally, in a book to be kept for that purpose, to be laid before the guardians at their next ordinary meeting, and to be termed "THE CHAPLAIN'S REPORT."

No. 3. To visit the sick paupers, and to administer religious consolation to them in the workhouse, at such periods as the guardians may appoint, and when applied to for that purpose by the master or matron.

*Master of Workhouse.*

By the same consolidated order, *Art.* 208, the following shall be the duties of the master :—

No. 1. To admit paupers into the workhouse, in obedience to the orders specified in *Art.* 88 (*ante*, p. 155), and also every person applying for admission who may appear to him to require relief through any sudden or urgent necessity, and to cause every pauper, upon admission, to be examined by the medical officer, as is directed in *Art.* 91 (*ante*, p. 155).

No. 2. To cause every male pauper above the age of seven years, upon admission, to be searched, cleansed, and clothed, and to be placed in the proper ward.

No. 3. To enforce industry, order, punctuality, and cleanliness, and the observance of all regulations for the government of the workhouse by the paupers, and by the several officers, assistants, and servants therein.

No. 4. To read prayers to the paupers before breakfast and after supper every day, or cause prayers to be read, according to *Art.* 124 (*ante*, p. 162).

No. 5. To cause the paupers to be inspected, and their names called over, in conformity with *Art.* 103, in order that it may be seen that each individual is clean and in a proper state.

No. 6. To provide for and enforce the employment of the able-bodied adult paupers, during the hours of labour; to assist in training the youths in such employment as will best fit them for gaining their own living; to keep the partially disabled paupers occupied to the extent of their ability; and to allow none who are capable of employment to be idle at any time.

No. 7. To visit the sleeping wards of the male paupers at eleven o'clock in the forenoon of every day, and see that such wards have been all duly cleansed and are properly ventilated.

No. 8. To see that the meals of the paupers are duly provided, dressed and served, according to the directions in *Arts.* 104 and 107 (*ante*, p. 159), and to superintend the distribution of the food.



No. 9. To say, or cause to be said, grace before and after meals.

No. 10. To visit all the wards of the male paupers before nine o'clock every night in winter, and ten o'clock in summer, and see that all the male paupers are in bed, and that all fires and lights therein are extinguished, except so far as may be necessary for the sick.

No. 11. To receive from the porter the keys of the workhouse at nine o'clock every night, and to deliver them to him again at six o'clock every morning, or at such hours as shall from time to time be fixed by the guardians.

No. 12. To see that the male paupers are properly clothed, and that their clothes are kept in proper repair.

No. 13. To cause the birth of every child born in the workhouse to be registered by the registrar of births and deaths within the space of one week after such child shall have been born; and also to enter such birth in a register kept according to Form (S.)

No. 14. To send for the medical officer in case any pauper is taken ill or becomes insane, and to take care that all sick and insane paupers are duly visited by the medical officer, and are provided with such medicines and attendance, diet and other necessaries, as the medical officer or the guardians direct, and to apprise the nearest relation in the workhouse of the sickness of any pauper, and, in the case of dangerous sickness, to send for the chaplain, and any relative or friend of the pauper, resident within a reasonable distance, whom the pauper may desire to see.

No. 15. To take care that no pauper at the approach of death shall be left unattended either during the day or the night.

No. 16. To give immediate information of the death of any pauper in the workhouse to the medical officer, and to the nearest relations of the deceased who may be known to him, and who may reside within a reasonable distance; and if the body be not removed within a reasonable time, to provide for the interment thereof.

No. 17. When requisite, to cause the death of every pauper dying in the workhouse to be duly registered by the registrar of births and deaths within five days after the day of such death; and also to enter such death in a register kept according to Form (T.)

No. 18. To deliver an inventory of the clothes and other property of any pauper who may have died in the workhouse to the guardians at their next ordinary meeting.

No. 19. To keep such portion of the workhouse medical relief book prescribed in this order as is assigned to him in the Form marked (Q.), and to keep all books or accounts which he is, or hereafter may be, by any order of the com-

missioners, directed and required to keep, to allow the same to be constantly open to the inspection of any of the guardians of the union, and to submit the same to the guardians at their ordinary meetings.

No. 20. To submit to the guardians, at every ordinary meeting, an estimate of such provisions and other articles as are required for the use of the workhouse, and to receive and execute the directions of the guardians thereupon.

No. 21. To receive all provisions and other articles purchased or procured for the use of the workhouse, and before placing them in store to examine and compare them with the bills of parcels or invoices severally relating thereto; and after having proved the accuracy of such bills or invoices, to authenticate the same with his signature, and submit them to the guardians at their next ordinary meeting.

No. 22. To receive and take charge of all provisions, clothing, linen, and other articles belonging to the workhouse, or confided to his care by the guardians, and issue the same to the matron or other persons as may be required.

No. 23. To report to the guardians from time to time the names of such children as the schoolmaster may recommend as fit to be put out to service, or other employment, and to take the necessary steps for carrying into effect the directions of the guardians thereon.

No. 24. To take care that the wards, rooms, larder, kitchen, and all other offices of the workhouse, and all the utensils and furniture thereof, be kept clean and in good order; and as often as any defect in the same, or in the state of the workhouse, shall occur, to report the same in writing to the guardians at their next ordinary meeting.

No. 25. To submit to the guardians, at every ordinary meeting, a report of the number of the inmates in the workhouse according to the Form (U).

No. 26. To bring before the visiting committee or the guardians any pauper inmate desirous of making a complaint or application to the guardians.

No. 27. To report forthwith to the medical officer and to the guardians in writing, all cases in which any restraint or compulsion may have been used towards any pauper inmate of unsound mind in the workhouse.

No. 28. To keep a book, in which he shall enter all his written reports to the guardians or to the medical officer, and to lay the same before the guardians at every ordinary meeting.

No. 29. To inform the visiting committee and the guardians of the state of the workhouse in every department, and to report in writing to the guardians any negligence or other misconduct on the part of any of the subordinate officers or servants of the establishment; and generally to observe and

fulfil all lawful orders and directions of the guardians suitable to his office.

**Art. 209.** The master shall not, except in case of necessity, purchase or procure any articles for the use of the workhouse, nor order any alterations or repairs of any part of the premises, or of the furniture or other articles belonging thereto, nor pay any moneys on account of the workhouse, or of the union, without the authority of the guardians, nor apply any articles belonging to the guardians to purposes other than those authorized or approved of by such guardians.

*Matron of Workhouse.*

By the same consolidated order, **Art. 210**, the following shall be the duties of the matron :—

**No. 1.** In the absence of the master, or during his inability to act, to act as his substitute in the admission of paupers into the workhouse, according to Arts. 88 and 208, Nos. 1 and 2, and to cause every pauper upon such admission to be examined by the medical officer, as is directed in Art. 91.

**No. 2.** To cause the pauper children under the age of seven years, and the female paupers, to be searched, cleansed, and clothed upon their admission, and to be placed in their proper wards.

**No. 3.** To provide for and enforce the employment of the able-bodied female paupers during the hours of labour, and to keep the partially disabled female paupers occupied to the extent of their ability, and to assist the schoolmistress in training up the children so as best to fit them for service.

**No. 4.** To call over the names of the paupers as is directed in Art. 103, to inspect their persons, and see that each individual is clean.

**No. 5.** To visit the sleeping wards of the female paupers at eleven o'clock in the forenoon of every day, and to see that such wards have been all duly cleansed, and are properly ventilated.

**No. 6.** To visit all the wards of the females and children every night before nine o'clock, and to ascertain that all the paupers in such wards are in bed, and all fires and lights not necessary for the sick or for women suckling their children therein extinguished.

**No. 7.** To pay particular attention to the moral conduct and orderly behaviour of the females and children, and to see that they are clean and decent in their dress and persons.

**No. 8.** To superintend and give the necessary directions for making and mending the linen and clothing supplied to the male paupers, and all the clothing supplied to the female

paupers and children, and to take care that all such clothing be properly numbered and marked on the inside with the name of the union.

No. 9. To see that every pauper in the workhouse has clean linen and stockings once a week, and that all the beds and bedding be kept in a clean and wholesome state.

No. 10. To take charge of the linen and stockings for the use of the paupers and the other linen in use in the workhouse, and to apply the same to such purposes as shall be authorized or approved of by the guardians, and to no other.

No. 11. To superintend and give the necessary directions concerning the washing, drying, and getting up of the linen, stockings, and blankets, and to see that the same be not dried in the sleeping wards, or in the sick wards.

No. 12. To take proper care of the children and sick paupers, and to provide the proper diet for the same, and for women suckling infants, and to furnish them with such changes of clothes and linen as may be necessary.

No. 13. To assist the master in the general management and superintendence of the workhouse, and especially in—

Enforcing the observance of good order, cleanliness, punctuality, industry, and decency of demeanor among the paupers ;

Cleansing and ventilating the sleeping wards and the dining-hall, and all other parts of the premises ;

Placing in store and taking charge of the provisions, clothing, linen, and other articles belonging to the union.

No. 14. When requested by the porter in pursuance of Art. 214, No. 5, to search any female entering or leaving the workhouse under the circumstances described in that article.

No. 15. To report to the master any negligence or other misconduct on the part of any of the female officers or servants of the establishment, or any case in which restraint or compulsion may have been used towards any female inmate of unsound mind.

No. 16. And generally to observe and fulfil all lawful orders and directions of the guardians suitable to her office.

*Workhouse Schoolmaster and Schoolmistress.*

By the same consolidated order, *Art.* 212, the following shall be the duties of the schoolmaster and schoolmistress :—

No. 1. To instruct the boys and girls according to the direction in Art. 114.

No. 2. To regulate the discipline and arrangements of the school, and the industrial and moral training of the children, subject to the direction of the guardians.

## PARISH.

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<p><i>What</i>, 392.  <i>In what cases and how divided</i>, 392.</p>	<div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle; font-size: 2em;"> </div> <div style="display: inline-block; vertical-align: middle; padding-left: 5px;"> <p><i>Parish boundaries</i>, 394.  <i>Parish property</i>, 395.  <i>Sale of parish property</i>, 395.</p> </div> </div>
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*What.*] In the ecclesiastical division of England, a parish is that portion of ground which is committed to the charge of one parson, vicar, or other minister, having the cure of souls therein (1 *Bl. Com.* 112); and the church of which has all parochial rights, namely, the right of burial, of baptism, and tithes. *Seld. Tithe*, 265, c. 9, s. 4.

There are places, however, not included in any such division, and are therefore termed extra-parochial.—These in some instances have had overseers appointed for them, under stat. 13 & 14 C. 2, c. 12, s. 21, and maintain their own poor; they are liable to be rated to the county rate, by stat. 55 G. 3, c. 51, s. 1; their tithes belong to the crown (2 *Inst.* 647); and where they consist of wastes or marsh lands, which have been improved and drained, they may be assessed to all parochial rates in the parish next adjoining. 17 G. 2, c. 37.

*In what cases and how divided.*] It shall be lawful for the commissioners, in the scheme for constituting any district, to specify some existing or intended church within the district as the parish church of such district, and immediately upon the issuing of the order of Her Majesty in council ratifying such scheme such district shall become and be a new parish, and such church, when consecrated, the church thereof, and the incumbent of such church the incumbent thereof, in the same manner, and to the same extent, to all intents and purposes, as is contemplated with respect to new parishes formed under the said Acts, and to the churches and incumbents thereof respectively; and the incumbent of such church shall be liable to the performance of all pastoral duties within the limits of such new parish. 19 & 20 Vict. c. 104, s. 2. Where-soever or as soon as banns of matrimony and the solemnization of marriages, churchings, and baptisms according to the laws and canons in force in this realm are authorized to be published and performed in any consecrated church or chapel to which a district shall belong, such district not being at the time of the passing of this Act a separate and distinct parish for ecclesiastical purposes, and the incumbent of which is by

such authority entitled for his own benefit to the entire fees arising from the performance of such offices, without any reservation thereout, such district or place shall become and be a separate and distinct parish for ecclesiastical purposes, such as is contemplated in the fifteenth section of the first-recited Act, and the church or chapel of such district shall be the church of such parish, and all and singular the provisions of the said firstly and secondly recited Acts (as amended by this Act) relative to new parishes, upon their becoming such, and to the matters and things consequent thereon, shall extend and apply to the said parish and church as fully and effectually as if the same had become a new parish under the provisions of the said last-mentioned Acts. *Id.* s. 14. The incumbent of every new parish created or hereafter to be created pursuant to the provisions of the said firstly and secondly recited Acts or of this Act shall, saving the rights of the bishop of the diocese, have sole and exclusive cure of souls and the exclusive right of performing all ecclesiastical offices within the limits of the same, for the resident inhabitants therein, who shall for all ecclesiastical purposes be parishioners thereof, and of no other parish, and such new parish shall, for the like purposes, have and possess all and the same rights and privileges, and be affected with such and the same liabilities, as are incident or belong to a distinct and separate parish, and to no other liabilities: provided always, that nothing herein contained shall be taken to affect the legal liabilities of any parish regulated by a local Act of Parliament, or the security for any loan of money legally borrowed under any Act of Parliament or otherwise. *Id.* s. 15. It shall be lawful for the commissioners, by the authority aforesaid, and subject to such consents as are herein-after mentioned, to divide any parish into two or more distinct and separate parishes for all ecclesiastical purposes whatsoever, and to fix and settle the respective proportion of tithes, glebe lands, and other endowments which shall arise, accrue, remain, and be within each of such respective divisions, according as by the like authority shall be deemed advisable; and the order made by Her Majesty in council, ratifying the scheme for such<sup>1</sup> division, shall be good and valid in law for the purpose of effecting the same; and such scheme shall set forth the particular expediency of such division, and how far it may be necessary in consequence thereof to make any alteration in ecclesiastical jurisdiction, and how the changes consequent upon such division in respect of patronage, rights of pew holders, and other rights and privileges, glebe lands, tithes, rentcharges, and other ecclesiastical dues, oblations, offerings, rates, and payments, may be made with justice to all parties interested; and such scheme shall also contain such directions and regulations relative to the duties and character of the incumbents of the respective

divisions of such parish, and to the performance of the offices and services of the church in the respective churches thereof, and to the fees to be taken for the same respectively, and to any other matter or thing which may be necessary or expedient by reason or in consequence of such change : provided always, that such division shall be made in the following cases with the following consents only ; that is to say, in the case of a benefice in the patronage of the crown, or in the chancellor of the duchy of Lancaster for the time being, or of the Duke of Cornwall, or of any archbishop or bishop, or of any lay or ecclesiastical corporation aggregate, or of a benefice in private patronage, with the consent of the patrons thereof respectively, with the consent of the bishop of the diocese, such consents to be testified as aforesaid : and provided also, that no such provision shall take effect until after the first avoidance then next ensuing of the church of the parish to be so divided, unless with the consent in writing of the actual incumbent thereof. *Id.* s. 25.

*Parish boundaries.*] The boundaries of parishes depend entirely upon ancient and immemorial custom (3 *Burn, Ecc. L.* 62) ; and hence it is, that in cases where they are doubted or disputed, the question cannot be determined by the ecclesiastical court, for that court has no jurisdiction to try a prescription or custom, but it must be decided by the temporal courts. *Duke of Rutland v. Bagshawe et al.*, 19 Law J. 294. And in order to preserve the evidence of such custom, by reputation, perambulations of the boundaries are very generally made in most of the parishes in England, in Rogation week in each year ; and the parishioners may justify entering and going over a man's land for that purpose. *Godday v. Michel*, Cro. El. 441. By the General Inclosure Act, 41 G. 3, c. 109, s. 3, authority is given to the commissioner or commissioners acting under any inclosure Act, if the boundaries of the parish in which the land to be inclosed is situate, or of any adjoining parish, should appear not to be sufficiently ascertained and distinguished, to inquire into the same by the testimony of witnesses, and to ascertain, set out, determine, and fix the same ; and the boundaries so ascertained and established, shall thenceforth be deemed the boundaries of such parish. See *R. v. St. Mary in Bury St. Edmunds*, 4 E. & A. 462. So, by stat. 2 & 3 Vict. c. 62, s. 34, the tithe commissioners are empowered, where the boundaries of a parish are in doubt or dispute before them, either to ascertain the old boundaries, or to set out and define a new boundary ; "and the boundary line so ascertained or newly defined, shall thenceforward be the boundary line of the said parish." See *R. v. Madeley*, 19 Law J. 187, m. By the County Rate Act, 56 G. 3, c. 49, s. 2, the justices in quarter sessions are enabled to inquire into

and fix the boundaries of "counties, ridings, divisions, and parts of counties, and other places of distinct and separate jurisdiction;" but no authority is given to them to inquire into or fix the boundaries of parishes.

*Parish property.*] The goods of the parish church, we have seen (*ante*, p. 12), vest in the churchwardens and their successors in office.

But the property in all goods, furniture, provisions, clothes, linen, and wearing apparel, tools, utensils, materials, and things whatsoever, had, bought, procured or provided for the use of any parish, township, hamlet, or place, are vested in the overseers of such parish, &c., for the time being and their successors in office; who are empowered to bring any action, or prefer any bill of indictment, against any person who shall steal, take, buy, or receive the same. 55 G. 3, c. 137, s. 1. So goods provided by parish officers for the use of the poor, may, in any indictment, or in any information or complaint for a summons, conviction or order, be described as the goods of the churchwardens and overseers of the poor of the parish. 7 G. 4, c. 6, s. 16. 11 & 12 Vict. c. 43, s. 4. And all materials, and tools provided for the repair of highways, at the expense of parishes or other districts in which such highways may be situate, may in any such indictment, information, or complaint be described as the property of the surveyor or surveyors of such highways. 7 G. 4, c. 64, s. 16. 11 & 12 Vict. c. 43, s. 4.

So all workhouses or lands purchased by churchwardens, and overseers of the poor, by authority of stat. 59 G. 3, c. 12, shall be conveyed to them and their successors, in trust for the parish; and they shall take and hold the same as a body corporate. 59 G. 3, c. 12, s. 17.

*Sale of parish property.*] By stat. 59 G. 3, c. 12, s. 9; 22 G. 3, c. 83, s. 43, and 1 & 2 G. 4, c. 56, workhouses and lands, &c., may be sold by the overseers, &c., and the fee-simple therein conveyed to the purchaser. And by stat. 5 & 6 W. 4, c. 69, s. 3, the guardians of any parish or union, and the overseers of any parish not under the management of a board of guardians, are empowered to sell, exchange, let, or otherwise to dispose of workhouses, tenements, buildings, lands, effects, or other property belonging to any such parish or union, and to convey, assign, or transfer the same accordingly to the purchasers or parties exchanging, as they shall direct; and, in case of a sale, to apply the produce in manner therein mentioned; provided that no such sale or exchange, or letting, shall take place, except with the consent of a majority of the rate-payers of such parish, and of the owners of property therein, entitled to vote under stat. 4 & 5 W. 4, c. 76, assem-



bled at a meeting to be duly convened and held for the purpose. See also stat. 5 & 6 Vict. c. 18.

The following are the necessary forms:—

*Notice of Meeting to consent to the Sale of Workhouses, &c.*

Parish of —, }  
 — Union, }  
 County of —.

Notice is hereby given, that a meeting of the owners of property in this parish, legally entitled to vote, in person, or by proxy, and of the rate-payers therein, will be held at —, in this parish, on \* —, the — day of —, at — in the forenoon, for the purpose of giving the consent of such meeting to the guardians of the — union selling the following premises, that is to say, —, under the provisions of an Act passed in the sixth year of the reign of His late Majesty King William the Fourth, intituled "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales," in such manner, and subject to such rules, orders, and regulations, touching such sale, and the conveyance of such property, and the application of the produce arising therefrom, for the permanent advantage of this parish, as the poor law board shall in that behalf direct.

\* Dated this — day of —, 185—.

A. B. Minister.

C. D. }  
 E. F. } Churchwardens.

G. H. }  
 I. J. } Overseers.

*Request to the Guardians to apply to the Poor Law Board to consent to Sale.*

Parish of —, }  
 — Union, }  
 County of —.

We, the undersigned majority of the parish officers, and we, the undersigned inhabitants of the parish of —, in the — union, in the count— of —, request you, the

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\* The meeting cannot be legally held earlier than the Thursday after the Sunday on or before which the notice is given,—as three clear days must intervene between the Sunday on or before which the notice is given and the day of meeting.

*guardians of the poor of the said union, to apply to the poor law board for their consent to the sale of the under-mentioned premises, belonging to the said parish, and for their directions as to such sale, and for the application of the produce thereof to the permanent advantage of the said parish.* [Here describe the premises, accurately, but concisely, stating whether the tenure is freehold, customary freehold, copyhold or leasehold, and whether subject to the payment of any quit or other rent. If any buildings are proposed to be sold, and it is considered desirable that the materials should be sold separately from the site, the circumstances should be stated. State also, when and how the parish became possessed of the property, and the trusts, if any exist, which affect the same. If the property has been built upon waste land, state whether it was so built with the consent of the lord of the manor, and the date of such consent.]

*The said premises cannot conveniently be used for the purposes of the said union, and we are of opinion that the sale thereof will be of permanent advantage to the said parish, for the following reasons.* [Here describe their condition, whether in a state of good repair or dilapidated; also in whose occupation, whether in that of paupers or not, or empty; and any other circumstances that may enable the guardians to judge of the desirableness of selling the property.]

*The said premises are estimated to be of the value of —, and yield an annual rent of —. We are also of opinion that it will be advisable to apply the proceeds of the sale, after deducting the expenses thereof, in the following manner, to the permanent advantage of the parish.* [Say whether as contribution to the union workhouse, or to what other purpose; if to pay a debt, say when it was contracted, by whom, for what purpose, and how such debt is secured; if to discharge a mortgage, state by whom and when created, the name of the mortgagee, and to what objects the money was applied.]

*Dated this — day of —, 185—.*

} *Churchwardens.*

} *Overseers.*

} *Inhabitants.*

*Request to the Poor Law Board to consent to Sale.*

*The guardians of the poor of the — union, being fully satisfied that the sale of the premises described in the annexed application will be of permanent advantage to the parish of —, do hereby request the poor law board to consent that the said guardians may sell the said premises, under the provisions of an Act passed in the sixth year of the reign of His late Majesty King William IV., intituled “An Act to facilitate the conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales,” and that the said poor-law board will issue such rules, orders, or regulations touching such sale, and the conveyance of the said premises, and the application of the produce thereof for the permanent advantage of the said parish, as they may see fit in that behalf.*

*In testimony whereof the said guardians have hereunto affixed their common seal, this — day of —, 185—.*



*Witness,*

*—, Clerk to the board of guardians. .*

*Declaratory of Possessory Title.\**

— Parish. }  
 — Union. }  
 — County. }

*I, —, of — [insert the christian and surname, and place of abode, and quality of the declarant at full length : if the declarant believe that he was born at that place, state the*

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\* This is to be altered according to the state of facts to which the declarant can speak.—It should be carefully read over by or to the declarant, who should not be an illiterate person or a marksman.—Two or more persons may join in the declaration, each speaking to the facts within his knowledge.—If there be any exception of qualification to any of the facts declared, it should be stated in the same paragraph as the fact which it affects.

fact], do solemnly and sincerely declare that I am — years of age, and that I have resided at — for — years last past.

*That I well know the property proposed to be sold by the guardians of the poor of the — union, with the approbation of the poor law board, consisting of — [describe the property in the terms used in the former papers, and if there be not here space enough, annex a schedule], in the parish of —.*

*That for the whole period of — years last past [the period of possession must not be less than twenty years last], during which I have known the same, the said premises have been in the possession of the churchwardens and overseers of the poor of the said parish of —.*

*That the said buildings have been from time to time repaired out of the poor rates of the said parish of —. [If the declarant have held the office of overseer, and disbursed money in repairs, state the fact. In some cases the annexation of extracts from the parish accounts and books may conduce to establish this and the following fact.]*

*That the churchwardens and overseers of the said parish have from time to time let the said premises, and placed therein such of the paupers of the said parish as they, or the parochial vestry thought fit; and that [if rents were received by the overseers, state the fact].*

*That I do not know, and have never known or heard of the said premises being subject to any charitable or other trust, or incumbrance.*

*That I do not know, and have never known or heard of any adverse claim having been made by any person, to any part of the said premises, and that I believe the same to be the exclusive and indisputable property of the churchwardens and overseers of the said parish.*

*That I verily believe that no deeds or writings relating to the said premises are in the possession, power, or procurement of the parish officers, or do exist.*

*That I verily believe that the said premises are not of leasehold nor of copyhold tenure.*

*And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provision of an Act passed in the 5th and 6th years of the reign of King William the Fourth, intituled “ An Act to repeal an “ Act of the present session of parliament, intituled ‘ An Act “ ‘ for the more effectual abolition of oaths and affirmations “ ‘ taken or made in various departments of the state, and “ ‘ to substitute declarations in lieu thereof, and for the*

“ ‘ more entire suppression of voluntary and extra-judicial  
 “ ‘ oaths and affidavits,’ and to make provisions for the  
 “ ‘ abolition of unnecessary oaths.’ ”

Declared and signed this — }  
 day of —, one thousand }  
 eight hundred and fifty—, }  
 at —, in the county of —, }  
 before me, —, }  
 one of Her Majesty's justices }  
 of the peace for —, or, }  
 a master extraordinary in }  
 Chancery. }

Signature }  
 of the }  
 Declarant. }

#### PARISH CLERK.

The parish clerk is appointed by the parson, vicar, or other minister (*Can.* 91); or otherwise, by custom. *Jermyn's case*, Cro. Jac. 670. He has his office for life (*Townsend v. Thorpe*, 2 L. Raym. 1507; 2 Str. 776); but he may be removed by the parson, &c., for sufficient cause (*R. v. Warren*, Cowp. 370), or by the archdeacon or other ordinary. 7 & 8 Vict. c. 59, s. 5. After being appointed, he is usually licensed by the ordinary. 3 Burn, *Ecc. Law.* 67.

By stat. 7 & 8 Vict. c. 59, s. 2, a person in holy orders, (deacon's or priest's orders,) may be elected church clerk, parish clerk, or chapel clerk.

#### SEXTON.

The sexton is an officer appointed by the parishioners, or, by custom, by the minister. His duties are, to sweep the church and keep it clean; to dig the graves, deposit the coffins therein, and make good the surface soil; and to perform such other duties as the churchwardens may assign to him. He is paid by the churchwardens. He holds his office for life or otherwise, according to the custom in that respect.

VESTRIES.

This subject will be considered under the following heads:—

1. *Parish Vestries*, p. 401.
2. *Vestries appointed under stat. 1 & 2 W. 4, c. 60*, p. 418.
3. *Select Vestries*, p. 430.

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1. *Parish Vestries.*

*Statutes relating to Parish Vestries*, p. 402.

*Vestry Meetings*, p. 402.

*Their Power and Duties in respect of Highways*, p. 403.

*Their Power and Duties in other respects*, p. 410.

A parish vestry is an assembly of the inhabitants of a parish, met together for the despatch of the affairs and business of the parish. 4 *Burn, Ecc. Law*, 8. The like assemblies may be holden of the inhabitants of a township, hamlet, or vill, separately maintaining its own poor; and although such an assembly cannot of course be termed a parish vestry, yet it has all the same power and authority with respect to the district for which it is holden, that a parish vestry possesses with respect to the parish, and is regulated in the same way. By stat. 58 G. 3, c. 69, which regulates parish vestries, it is provided by sect. 7, that all provisions, authorities, and directions in this Act contained, in relation to parishes, shall extend and be construed to extend to all townships, vills, and places having separate overseers of the poor, and maintaining their poor separately;—and that all the directions and regulations herein contained in regard to vestries, shall extend and be applied to all meetings which may by law be holden of the inhabitants of any parish, township, vill, or place for any of the purposes in this Act expressed;—and that the notices by this Act required to be given of every vestry may, in places in which there is or shall be no parish church or chapel, or where there shall not be divine service in such church or chapel, be given and published in such manner as notices of the like nature shall have been there usually given and published, or as shall be most effectual for communicating the same to the inhabitants of every such parish, township, vill, or place respectively. 58 G. 3, c. 69, s. 7. This Act only extends to England and Wales (*Id.* s. 11); it does not extend to any parish in the city of London or borough of Southwark (*Id.* ss. 9, 10); and it must not be understood as at all affecting or altering the time of holding any vestry, parish, or town meeting, or the time of holding any vestry, parish, or town meeting, which is by the authority of any Act required to be holden on any certain day, or within

any certain time in such an Act prescribed and directed ; nor shall anything in this Act contained, extend to take away, lessen, prejudice, or affect the powers of any vestry or meeting holden in any parish, township, or place, by virtue of any special Act or Acts, of any ancient and special usage or custom, or to change or affect the right or manner of voting in any vestry or meeting so holden. *Id.* s. 3.

*Statutes relating to Parish Vestries.*

58 G. 3, c. 69.	1 Vict. c. 45.
59 G. 3, c. 85.	13 & 14 Vict. c. 57.
1 & 2 W. 4, c. 60.	16 & 17 Vict. c. 45.

*Meetings of Parish Vestries.*

<i>Notice of holding, 402.</i>	<i>Manner of voting, 404.</i>
<i>Where holden, 402.</i>	<i>Books, &amp;c., and how preserved, 405.</i>
<i>Chairman, 403.</i>	
<i>Who may attend and vote, 403.</i>	

*Notice of holding.*] No vestry, or meeting of the inhabitants in vestry, of or for any parish, shall be holden, until public notice shall have been given of such vestry, and of the place and hour of holding the same, and the special purpose thereof, three days at the least before the day to be appointed for holding such vestry. 58 G. 3, c. 69, s. 1. This notice was required to be given, by publishing it in the parish church or chapel on some Sunday, during or immediately after divine service, and by affixing a written or printed copy on the principal door. *Id.* But this is repealed ; and now, so far as relates to publishing it during or after divine service in the church, the notice being reduced into writing, copies of it in writing or in print, or partly in writing and partly in print, shall, previously to the commencement of divine service on the several days on which such notices have heretofore been given in the church or chapel of any parish or place, or at the door of any church or chapel, be affixed on or near to the doors of all the churches and chapels within such parish or place. 1 Vict. c. 45, ss. 1, 2. And such notice shall be previously signed by a churchwarden of the church or chapel,—or by the rector, vicar, or curate of such parish,—or by any overseer of the poor of such parish. *Id.* s. 3.

*Where holden.*] From these meetings being holden in the vestry of the church, they derived their name of vestry meetings or vestries ; and they have heretofore usually been holden in the vestry, or in the church itself. But as this, in large

parishes, sometimes led to certain inconveniences, it was enacted by stat. 13 & 14 Vict. c. 57, s. 1, that upon the application of the churchwardens or overseers of any parish, containing a population of two thousand persons, according to the last preceding census, in pursuance of a resolution of the vestry of such parish, the poor law commissioners may make an order that this Act shall be put in force within the parish. And from and after the expiration of twelve calendar months from the making and publishing of any such order, no meeting of the inhabitants of the parish for the purpose of holding a vestry, or for any other purpose than that of divine worship, or some ecclesiastical or charitable object, or some other purpose approved by the bishop of the diocese, shall be holden in any parish church or chapel, or other consecrated church or chapel, nor in the chancel thereof, nor, except in case of urgency, and with the previous approval of the said commissioners, in the vestry room attached to such church or chapel, in any parish or place, named in such order. *Id.* s. 2. The Act then makes provisions for providing some other room or place within the parish for such meetings, and enables the churchwardens or overseers to hire or purchase the same, or take it upon lease, and to borrow money for the purpose if necessary. *Id.* ss. 3, 4, 5.

*Chairman.*] The minister of the parish, that is to say, the rector, vicar, or perpetual curate, if he be present, presides as chairman. 4 *Burn, Ecc. Law*, 9. But by stat. 58 G. 3, c. 69, s. 2, 'in case the rector, vicar, or perpetual curate, shall not be present, the persons assembled in pursuance of the notice already mentioned, shall forthwith nominate and appoint, by plurality of votes to be ascertained as hereinafter directed, one of the inhabitants of such parish to be the chairman, and to preside at the meeting.

*Who may attend and vote.*] None but persons rated to the relief of the poor of the parish, shall be present at the meeting or vote. See 58 G. 3, c. 69, s. 3, *post*. And formerly the right was confined to inhabitants. But by stat. 59 G. 3, c. 85, s. 1, any person who shall be assessed and rated for the relief of the poor in respect of any annual rent, profit, or value arising from any lands, tenements, or hereditaments situate in any parish, in which any vestry shall be holden under the said recited Act, although such person shall not reside in or be an inhabitant of such parish, shall and may lawfully be present at such vestry, and such person shall have and be entitled to give such and so many vote or votes at such vestry, in respect of the amount of such rent, profit, or value, as by the said Act any inhabitant of such parish present at such vestry might or ought to have and be entitled



to give in respect of such amount, and to all intents and purposes as if such person were an inhabitant of such parish. No person, however, who shall have refused or neglected to pay any rate for the relief of the poor (except a rate which shall have been made or become due within three calendar months immediately preceding such vestry meeting, 16 & 17 Vict. c. 45, s. 1), and shall have been demanded of him, shall be entitled to vote or to be present in any vestry of the parish for which such rate shall have been made, until he shall have paid the same. 58 G. 3, c. 69, s. 5. 59 G. 3, c. 85, s. 3.

And a corporation, body politic or corporate, or company, rated, and the rate paid if demanded, whether rated in the name of such corporation or of any officer thereof, may be present and vote at such vestry by their clerk, secretary, steward, or other agent duly authorized for the purpose, as fully as any rated inhabitant of the parish. 59 G. 3, c. 85, s. 2.

And lastly, by stat. 58 G. 3, c. 69, s. 4, when any person shall have become an inhabitant of any parish, or become liable to be rated therein since the making of the last rate for the relief of the poor thereof, he shall be entitled to vote for and in respect of the lands, tenements, and property for which he shall have become liable to be rated, and shall consent to be rated, in like manner as if he should have been actually rated for the same.

*Manner of voting.*] By stat. 58 G. 3, c. 69, s. 3, it is enacted, that in all such vestries every inhabitant present, who shall, by the last rate which shall have been made for the relief of the poor, have been assessed and charged upon or in respect of any annual rent, profit, or value not amounting to fifty pounds, shall have and be entitled to give one vote and no more; and every inhabitant there present, who shall in such last rate have been assessed or charged upon or in respect of any annual rent or rents, profit or value, amounting to fifty pounds or upwards (whether in one or in more than one sum or charge), shall have and be entitled to give one vote for every twenty-five pounds of annual rent, profit, and value upon or in respect of which he shall have been assessed or charged in such last rate, so nevertheless that no inhabitant shall be entitled to give more than six votes; and in cases where two or more of the inhabitants present shall be jointly rated, each of them shall be entitled to vote according to the proportion and amount which shall be borne by him of the joint charge; and where one only of the persons jointly rated shall attend, he shall be entitled to vote according to and in respect of the whole of the joint charge.

But in all cases of equality of votes upon any question aris-

ing in such vestry, the chairman, in addition to such vote or votes as he may by virtue of this Act be entitled to give in right of his assessment, shall have the casting vote. 58 G. 3, c. 69, s. 2.

The vestry may adjourn, if they will; but the adjournment must be carried by a majority of the ratepayers present. The chairman has no authority of himself to adjourn the meeting. *Stoughton v. Reynolds*, 2 Str. 1045; Fortesc. 168.

*Books, &c., and how preserved.]* Minutes of the proceedings and resolutions of every vestry, shall be fairly and distinctly entered in a book to be provided for the purpose by the churchwardens and overseers of the poor, and shall be signed by the chairman, and by such other of the persons present as shall think proper to sign the same. 58 G. 3, c. 69, s. 2.

And by the same statute, sect. 6, as well the books hereby directed to be provided and kept for the entry of the proceedings of vestries, as all former vestry books, and all rates and assessments, accounts, and vouchers of the churchwardens, overseers of the poor, and surveyors of the highways, and other parish officers, and all certificates, orders of courts and of justices, and other parish books, documents, writings, and public papers of every parish, except the registry of marriages, baptisms, and burials, shall be kept by such person and persons, and deposited in such place and manner, as the inhabitants in vestry assembled shall direct; and if any person in whose hands or custody any such book, rate, assessment, account, voucher, certificate, order, document, writing, or paper shall be, shall wilfully or negligently destroy, obliterate, or injure the same, or suffer the same to be destroyed, obliterated, or injured, or shall, after reasonable notice and demand, refuse or neglect to deliver the same to such person or persons, or to deposit the same in such place as shall by the order of any such vestry be directed, every person so offending, and being lawfully convicted thereof on his own confession, or on the oath of one or more credible witness or witnesses, by and before two of His Majesty's justices of the peace, upon complaint thereof to them made, shall for every such offence forfeit and pay such sum not exceeding fifty pounds, nor less than forty shillings, as shall by such justices be adjudged and determined; and the same shall be recovered and levied, by warrant of such justices, in such manner and by such ways and means as poor's rates in arrear are by law to be recovered and levied, and shall be paid to the overseers of the poor of the parish against which the offence shall be committed, or to some of them, and be applied for and towards the relief of the poor thereof: provided nevertheless, that every person who shall unlawfully retain in his custody,

or shall refuse to deliver to any person or persons authorized to receive the same, or who shall obliterate, destroy, or injure, or suffer to be obliterated, destroyed, or injured, any book, rate, assessment, account, voucher, certificate, order, document, writing, or paper, belonging to any parish, or to the churchwardens, overseers of the poor, or surveyors of the highways thereof, may, in every such case, be proceeded against in any of His Majesty's courts, civilly or criminally, in like manner as if this Act had not been made.

### *Their Powers and Duties in respect of Highways.*

*As to surveyors, 406.*

*As to collectors of highway rates, 406.*

*As to officers in large parishes, 406.*

*Stopping up or diverting highways, 407.*

*Consent to erecting direction posts, &c., 407.*

*Consent to materials being purchased, &c., 407.*

*Consent to a way repairable by individuals, &c., being made a parish road, 407.*

*Consent to a way dedicated to the public being a parish road, 408.*

*As to surveyors.]* The inhabitants of every parish, &c., maintaining its own highways, at their first meeting in vestry for the nomination of overseers of the poor in every year, shall proceed to the election of one or more persons to serve the office of surveyor in the said parish, &c., for the year then next ensuing; and in such case, notice of such election shall be given by the chairman to the person elected, and to the outgoing surveyor: provided always, that in any parish, &c., where there is no meeting in the year for the nomination of overseers of the poor, the inhabitants contributing to the highway rate, shall meet at their usual place of public meeting upon the 25th of March, or within fourteen days afterwards, in every year, to elect one or more persons to serve the office of surveyors of highways for the said parish, &c. 5 & 6 W. 4, c. 50, s. 6.

*As to collectors of highway rates.]* The surveyor of the highways of any parish, by consent of the majority of the inhabitants in vestry, may appoint any number of collectors of the highway rates, taking security from them. 5 & 6 W. 4, c. 50, ss. 36, 37.

*As to officers in large parishes.]* In large parishes, where the population exceeds 5,000, the vestry, by a majority of at least two-thirds, may appoint a board for purpose of superintending the highways in the parish, and of carrying the pro-

visions of the Highway Act into effect. 5 & 6 W. 4, c. 50, s. 18, *ante*, p. 213.

*Stopping up or diverting highways.]* When the inhabitants in vestry assembled shall deem it expedient that any highway should be stopped up, diverted or turned, either entirely, or reserving a bridleway, or footway along the whole, or any part or parts thereof, the chairman of such meeting shall, by an order in writing, direct the surveyor to apply to two justices to view the same, and shall authorize him to pay all the expenses attending such view, and the stopping up, diverting, or turning such highway, either entirely, or subject to such reservation as aforesaid, out of the money received by him for the purposes of this Act. 5 & 6 W. 4, c. 50, s. 84. See as to the subsequent proceedings, *ante*, pp. 231-235.

*Consent to erecting direction posts, &c.]* The consent of the inhabitants in vestry must be obtained, before the surveyor of the highways can erect direction posts, boundary stones, &c. *Ante*, p. 235.

*Consent to materials being purchased, &c.]* In every parish, the surveyor may, with the consent of the inhabitants in vestry, contract for purchasing, getting, and carrying the materials required for the repair of the highways. 5 & 6 W. 4, c. 50, s. 46, *ante*, p. 217.

*Consent to a way repairable by individuals, &c., being made a parish road.]* Highways repairable by individuals or corporations, may, by stat. 5 & 6 W. 4, c. 50, s. 62, become parish roads; by which section it is enacted that any body politic or corporate, or any person, liable to repair any highway by reason of tenure of any lands, or otherwise howsoever, or the surveyor of the parish in which the said highway is situate, may, if he or either party shall think proper, having first obtained the consent of the inhabitants in vestry assembled, apply to any justice for the purpose of making the said highway a parish highway, and to be repaired by the surveyor of the said parish; and the said justice is hereby authorized and required to issue his summons, requiring the said surveyor, or the party so liable to repair the said highway as aforesaid, to appear before the justices at the next special sessions for the highways, and if both parties appear, such justices may then proceed to determine the matter; but in case the surveyor or party summoned shall not appear on such first summons, or appearing shall require further time, such justices shall adjourn the further consideration of the matter to the next special sessions for the high-

ways, of which the said surveyor or party not appearing shall have notice, on which day the justices so assembled at such special sessions shall proceed to hear the parties and their witnesses, and whether the surveyor or party summoned do or do not appear, shall proceed to examine and determine the matter ; and in case they decide that the said highway shall become a parish highway, and be thereafter repaired by the surveyor of the said parish, they shall, by an order under their hands, fix the proportion of the expenses of repairing the said highway to be annually paid by such body politic or corporate or person as aforesaid, to the surveyor of the said parish, and the order of the said justices shall be binding on the surveyor and the said parish, and the said body politic or corporate or person as aforesaid, their heirs, successors, and assigns : provided nevertheless, that the said justices, instead of fixing the proportion of the expenses of repairing the said highway to be annually paid as aforesaid, may, by an order under their hands, fix a certain sum to be paid by such body politic or corporate or person as aforesaid, to the surveyor of the said parish, in full discharge of all claims thereafter in respect of the repairs of such highway ; and in default of payment of such last-mentioned sum or of such annual sum as aforesaid, the said surveyor may proceed for the recovery thereof, in the same manner as any penalties and forfeitures are recoverable under this Act : provided always, that when the sum so fixed to be paid in full discharge of all claims thereafter in respect of the repair of such highways, shall exceed the sum of 100*l.*, the said sum when received shall be vested in the name of the minister, churchwardens, and surveyors of the highways of the parish within which such highway shall be situate, in some public government securities, and the interests and dividends from time to time arising or accruing therefrom shall be applied towards the repairs of the highways within the said parish ; but when the sum so fixed to be paid in full discharge of all claims as aforesaid, shall not exceed the sum of 100*l.*, the said last-mentioned sum, or any part thereof, on the application by and with the consent of the inhabitants of the parish in vestry assembled and of the justices in special sessions assembled, shall and may be paid to the surveyor of the said parish, to be applied towards the repair of the highways within the said parish. 5 & 6 W. 4, c. 50, s. 62.

*Consent to a way dedicated to the public being a parish road.]* By stat. 5 & 6 W. 4, c. 50, s. 23, no road or occupation way made or hereafter to be made by and at the expense of any individual or private person, body politic or corporate, nor any roads already set out or to be hereafter set out as a private driftway or horsepath in any award of commissioners

under an Inclosure Act, shall be deemed or taken to be a highway which the inhabitants of any parish shall be compellable or liable to repair,—unless the person, &c., proposing to dedicate such highway to the use of the public, shall give three calendar months' previous notice in writing, to the surveyor of the parish, of his intention to dedicate such highway to the use of the public, describing its situation and extent, and shall have made the same in a substantial manner, and of the width required by this Act, and to the satisfaction of the said surveyor and of any two justices of the peace of the division in which such highway is situate, in petty sessions assembled, who are hereby required, on receiving notice from such person or body politic or corporate, to view the same, and to certify that such highway has been made in a substantial manner, and of the width required by this Act, at the expense of the party requiring such view, which certificate shall be enrolled at the quarter sessions holden next after the granting thereof,—then and in such case, after the said highway shall have been used by the public, and duly repaired and kept in repair by the said person, body politic or corporate, for the space of twelve calendar months, such highway shall for ever thereafter be kept in repair by the parish in which it is situate : provided nevertheless, that on receipt of such notice as aforesaid, the surveyor of the said parish shall call a vestry meeting of the inhabitants of such parish, and if such vestry shall deem such highway not to be of sufficient utility to the inhabitants of the said parish, to justify its being kept in repair at the expense of the said parish, any one justice of the peace, on the application of the said surveyor, shall summon the party proposing to make the new highway to appear before the justices at the next special sessions for the highways to be held in and for the division in which the said intended highway shall be situate ; and the question as to the utility as aforesaid of such highway, shall be determined at the discretion of such justices.

*Their Power and Duty in other respects.**In Directing Landlords to be rated for Small Tenements, p. 410.**In Appointing Churchwardens, p. 412.**In Voting for Church-rate, p. 413.**In Nominating and Electing Assistant Overseers, p. 413.**In Directing Workhouses to be built, &c. p. 413.**In Providing Land to employ the Poor, p. 414.**In Making out Lists of Persons for Constables, p. 414.*

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*Power and Duty of Vestry, in Directing Landlords to be rated for Small Tenements.**In what cases, 410.**How rated, 411.**Rates how recovered, 411.**Rights and privileges of owners and occupiers, 411.*

*In what cases.]* By stat. 18 & 14 Vict. c. 99, s. 1, it shall be lawful for the vestry of any parish, from time to time and at all times hereafter, to declare and order that the owners of tenements in such parish, the yearly rateable value whereof shall not exceed six pounds, shall be rated and assessed to the rates for the relief of the poor in respect of such tenements, instead of the occupiers thereof, and the order so made shall remain in force until rescinded in the manner hereinafter authorized.

But it shall be lawful for the vestry of the said parish, by a majority of two-thirds at least of the votes of the persons present at a meeting duly called for that purpose pursuant to notice, as hereinafter mentioned, and competent to vote thereat, at any time after the expiration of two years from the time when any such order shall have been so made, to order that from and after a day to be fixed by such vestry, not being less than three years from the date of such original order, such order shall cease and be rescinded, in which case, from and after such last-mentioned day, the said order shall be rescinded and no longer in force : provided nevertheless, that the provisions in this Act contained shall remain and continue in force for the purpose of collecting and recovering any rate which may have been previously made in pursuance of such order ; provided also, that notice for calling every such meeting as aforesaid shall be by writing, signed by four ratepayers of the parish, affixed on the principal outer door of the parish church or chapel of the parish, or on the usual place of affixing notices relating to the affairs of the parish, at some time not

less than thirty or more than forty days previous to such meeting. *Id.* s. 2.

*How rated.*] Whilst any such order as firstly hereinbefore mentioned is in force, the respective owners of such tenements shall be rated and assessed (instead of the occupiers thereof) to the rates for the relief of the poor and to the rates for the repairs of the highways, which otherwise such occupiers might by law be rated to. *Id.* s. 3. And for tenements, the yearly rateable value whereof shall not exceed six pounds, they shall be assessed to the rates for the relief of the poor, and to the rates for the repairs of the highways, in respect of such tenements, at three-fourths of the amount at which such tenement would be liable to be rated in case this Act had not passed; and further, that whilst such order as firstly hereinbefore mentioned is in force, if any owner of one or more such tenements shall be desirous of paying a rate for one year in respect of all such tenements in any parish, whether such tenements be occupied or unoccupied, and shall give notice in writing of such his desire to the overseers of the poor, and the surveyors of the highways within one calendar month after the passing of this Act, or in any subsequent year within fourteen days next after the twenty-fifth day of March in that year, then and in such case such owner shall be assessed to the rates for the relief of the poor, and to the rates for the repair of the highways, in respect of such tenement or tenements respectively, whether the same be occupied or unoccupied, from thenceforth till the twenty-fifth day of March following, at a sum not being less than one-half of the amount at which such tenement or tenements respectively would be liable to be rated, if occupied, in case this Act had not passed. *Id.* s. 4.

*Rates how recovered.*] The rates to be assessed as aforesaid, together with the costs and charges of levying and recovering the same, may be levied on the goods of and recovered from the respective owners of such tenements as aforesaid, by distress, action, suit, or other proceeding, in the same way as such rates, if lawfully assessed on the occupiers of such tenements, might by law be levied on the goods of or recovered from such occupiers; and, further, the goods and chattels of the occupiers of such tenements shall be liable to be distrained and sold for payment of such of the said rates as shall accrue due during their respective occupations, in the same way as if such rates were assessed on such occupiers. *Id.* s. 5.

*Rights and privilege of owners and occupiers.*] Every such owner so rated as aforesaid shall have the same right of appeal (subject to the same conditions) against rates, and the same



rights to vote in vestry, as if he were an occupier duly rated in respect of the same tenement. *Id.* s. 6.

And such owners paying such rates in respect of tenements continuing to be held by occupiers under now existing tenancies for a greater term than from year to year shall be entitled to add what they shall so pay to the rent payable in respect of such tenements, and have the same remedies for recovering the same as for rent in arrear; and that occupiers, other than such as shall continue to hold under now existing tenancies for a greater term than from year to year, may (whether paying such rates voluntarily or by compulsion) deduct the respective amount so to be answered by them as aforesaid, together with all costs and charges they may have incurred on account thereof, from the rent payable in respect of such tenements, and such amount shall be deemed debts due from such owners to such occupiers, and be recoverable by action. *Id.* s. 8.

Where the owner of such tenement shall be rated to the relief of the poor by virtue of this Act instead of the occupier thereof, and such owner shall have paid all money due on account of any rate or rates in respect of such tenement, such occupier shall be entitled to all municipal privileges and franchises to which by virtue of stat. 5 & 6 W. 4, c. 76, he would have been entitled if he himself had been rated, and had paid such rate or rates; and if such owner so rated as aforesaid shall not have paid such rate or rates, it shall be lawful for such occupier to tender to the overseers of the poor, or other person authorized by law to receive the same, the amount of any rate or rates then due from such owner in respect of such tenement, and such overseer or other person so authorized as aforesaid shall be bound to receive the same; and such occupier shall, on the payment or tender of such amount, be entitled to exercise all such privileges and franchises as hereinbefore mentioned: provided always, that any occupier so paying any rate or rates in respect of any tenement where the owner is rated to the same, shall be entitled to deduct and retain the amount so paid by him from the next payment of rent to be made by him to such owner, or to recover the same from such owner, as money paid to and for the use of such owner. *Id.* s. 7.

The 14 & 15 Vict. c. 39, s. 1, preserves to the occupier of a small tenement rated to the landlord the parliamentary franchise arising from rating and payment of rates. There is, however, no such preservation of the right of the occupier to vote in vestry or for guardians of the poor.

### *Power and Duty of Vestry, in Appointing Churchwardens.*

This subject we have already fully considered, *ante*, p. 11. The churchwardens are appointed either by the minister and

the parish vestry jointly, or, if they cannot agree, the minister then shall choose one, and the vestry the other. *Can.* 89. But by custom there may be more than two, and differently chosen from the manner here mentioned. *Ante*, p. 11.

*Power and Duty of Vestry to Vote for Church-rate.*

What repairs and expenses of the church the vestry are bound by law to provide for, and what not, have been already noticed, *ante*, p. 1. The effect of a majority of the parishioners, at a vestry meeting for the purpose, has also been considered, *ante*, p. 3.

*Their Authority to Nominate and Elect Assistant Overseers of the Poor.*

The inhabitants of any parish in vestry assembled [or of any township, village, or place, having separate overseers of the poor, and maintaining their poor separately], in a meeting of the inhabitants thereof holden after due and legal notice, may nominate and elect any discreet person or persons to be assistant overseer or overseers of the poor of such parish, &c., and determine and specify the duties to be by him or them executed and performed, and fix such yearly salary for the execution of the said office, as shall by such inhabitants be thought fit. 59 G. 3, c. 12, s. 7. Two justices then by their warrant appoint the party, so nominated and elected, to be assistant overseer. *Id.* See *ante*, p. 343.

And where a collector of poor-rates shall be appointed under any order of the poor law board, the inhabitants in vestry assembled of any parish situated within the district for which any such collector acts, may appoint such collector to discharge all the duties of overseer of the poor, in addition to those of collector of the poor-rates for such parish, and in the same manner as if he were appointed thereto as an assistant overseer, under the provisions of stat. 59 G. 3, c. 12, above mentioned. 7 & 8 Vict. c. 101, s. 61. See *ante*, p. 344.

*Their Authority as to Workhouses.*

The inhabitants of a parish in vestry assembled, may direct the churchwardens and overseers of the poor to erect and build in such parish a suitable workhouse, or to alter and enlarge any messuage or tenement belonging to such parish for that purpose, and to purchase or take on lease any ground within the parish for the purpose of such building, or for enlarging

any such other messuage or tenement belonging to such parish for that purpose ; or such churchwardens and overseers may and they are hereby authorized to add to and enlarge any such insufficient workhouse, as the inhabitants of the parish in vestry shall think fit and direct. 59 G. 3, c. 12, s. 8. They may direct insufficient workhouses to be sold. *Id.* s. 9. And where no sufficient workhouse can be procured in the parish, they may, with the consent of two justices, direct houses or buildings suitable for the purpose, in any adjoining parish, to be purchased or hired (*Id.* s. 10); and which then shall be deemed and taken to be part of their parish. *Id.* s. 11. All this, however, must be done under the control, and subject to the rules, orders and regulations of the poor law board. 4 & 5 W. 4, c. 76, s. 21.

*Their Authority to Provide Land to Employ the Poor.*

The inhabitants of a parish in vestry assembled, may consent to the churchwardens and overseers in using the parish lands, or in purchasing or hiring other lands, for the purpose of employing the poor in its cultivation (59 G. 3, c. 12, s. 12); or in letting portions of it to the poor (*Id.* s. 13); under the control and subject to the rules, orders and regulations of the poor law board. 4 & 5 W. 4, c. 76, s. 21. 5 & 6 W. 4, c. 69, s. 4.

*Duty of Vestry to Make out Lists of Persons to serve as Constables.*

The overseers of every parish, [township, &c.] upon the receipt of such precept, shall summon a meeting of the inhabitants in vestry to be holden within fourteen days after the receipt of the said precept ; and the vestry at such meeting shall make out a list in writing of such number as shall be named in the precept of men residing within their parish, &c., who shall be qualified and liable to serve as constables, with the christian name and surname, and with the true place of abode, the title, quality, calling, or business of each, written at full length : provided also, that it shall be lawful for the vestry to annex to the said return the names of any number of men willing to serve the office of constable, and whom the vestry will recommend to be appointed, although not having the qualification hereinafter mentioned. 5 & 6 Vict. c. 109, s. 3.

*Vestry Clerk.*

*How elected, 415.*  
*His duties, 416.*

| *His salary, 417.*

Before the passing of stat. 13 & 14 Vict. c. 57, the office of vestry clerk was not a permanent situation, but the majority of the inhabitants present at any meeting might appoint whom they pleased as their clerk, and might continue to employ him at subsequent meetings, if they would, and remunerate him if they thought fit. The law upon the subject was in a very uncertain and unsatisfactory state. But now, by the above statute, 13 & 14 Vict. c. 57, s. 1, in every parish [or place having separate overseers of the poor, and maintaining its own poor, sect. 10] where the population exceeds two thousand persons, according to the last preceding census, the poor law commissioners, if an application be made to them by the churchwardens, in pursuance of a resolution of the vestry, may make an order that the said Act, or part of it, shall be applied to and put in force within the parish. And then the vestry clerk may be appointed, and his office and duties regulated, under that Act, in the following manner.

*How elected.]* The churchwardens or other persons to whom it belongs to convene meetings of the vestry in any such parish shall, within the space of one calendar month from and after the making and publishing of any order of the commissioners so applied for, if such order extend to the appointment of vestry clerk as aforesaid, and also, in case of any subsequent vacancy in the office of vestry clerk, within one calendar month next after such vacancy, convene a meeting of the vestry of any parish named in such order, for the special purpose of electing a vestry clerk, to perform such of the duties hereinafter mentioned, as shall be applicable to such parish, in addition to those which are or may be imposed upon vestry clerks by any Act or Acts of parliament; and public notice of such vestry, and the place of holding the same, and the special purpose thereof, shall be given, in the usual manner in which notice of the meetings of the vestry is now given, at least seven days before the day to be appointed for holding such vestry; and at such meeting the vestry shall proceed to elect some fit and competent person to be vestry clerk, and the person so elected shall not be removable from office except by a resolution passed at a vestry to be called for that special purpose in the manner herein-before mentioned, and with the consent of the said commissioners for administering the laws for the

relief of the poor in England, or by an order under the seal of the said commissioners. 13 & 14 Vict. c. 57, s. 6.

*His duties.]* It shall be the duty of such vestry clerk, unless otherwise directed by the poor law commissioners,—

To give notice of and attend the meetings of vestry and committees appointed thereat :

To summon and attend meetings of the churchwardens and overseers, when required, and to enter the minutes thereof respectively :

To keep the account of all charity moneys which the churchwardens or overseers are authorized or are accustomed to distribute :

To keep the vestry books, and the parish deeds and documents, and the rate books and accounts which are closed, and to give copies of and extracts from the same to any person entitled thereto, such person paying for the same at the rate of four-pence for every seventy-two words or figures, and to permit any person or persons rated to the relief of the poor of the said parish, at all reasonable times, to inspect the same or any of them, on pain of dismissal for neglecting to give such copies or permit such inspection :

To make out, when required by the vestry, the church-rate, and procure the same to be signed and completed, and to retain the custody thereof, and, where there is no collector of poor-rates or assistant overseer, to make out the poor-rate, and procure the same to be allowed, and to make all the subsequent entries in the rate books, and to give the notices thereof required by law :

To prepare and issue the necessary process for recovering of arrears of such rates respectively before the justices, and procure the summons to be served, and to attend the justices thereon, and advise the churchwardens and overseers as to the recovery of such arrears :

To keep and make out the accounts of the churchwardens, and to present such accounts to the vestry or other legal authority, to be passed, and to examine the church-rate, collectors' accounts and returns of arrears :

To assist the overseers in making out their accounts (when-ever required by them), and, subject to the rules and regulations of the commissioners for administering the laws for the relief of the poor, to examine from time to time the accounts of the assistant overseers or collectors of poor-rates, and their returns of arrears :

To attend the audit of accounts of the overseers, and conduct all correspondence arising therefrom :

To assist the churchwardens or overseers in preparing and

making out all other parochial assessments and accounts, and in examining the accounts of the collectors of such assessments :

To ascertain and make out the list of persons liable to serve on juries, and to cause them to be printed and duly published, and returned to the justices :

To give the notices for claims to vote for members of parliament, and to make out lists of voters, and get the same printed and published, and duly returned, according to law, and to attend the court for revising them, and to prepare, make out, and publish the burgess lists and the lists of constables :

To make all returns required of the churchwardens or of the overseers by law or proper authority :

To advise the churchwardens and overseers in all the duties of their office ; and also to perform such other duties and services of a like nature as the said commissioners for administering the laws for the relief of the poor in England, from time to time, at the request of the churchwardens or overseers of any such parish, or otherwise, shall prescribe and direct to be performed by such vestry clerk. *Id.* s. 7.

But nothing herein contained shall exempt or discharge, or be construed to exempt or discharge, any churchwarden or overseer of the poor from the performance of any duty required of him by law, nor oblige him to avail himself of the assistance of any vestry clerk to be appointed as aforesaid in the performance of his duties, unless he shall think fit so to do. *Id.* s. 9.

*His salary.]* The amount of salary, or other remuneration to be paid to the vestry clerk, as well as the days and times on which and the persons by whom the same shall be payable, shall be fixed by the said commissioners, and altered from time to time as there shall be occasion ; and such salary or remuneration shall be chargeable upon and paid out of the moneys to be raised for the relief of the poor for any such parish : and, where the said commissioners shall deem requisite, such vestry clerk shall give such security, and to such persons, as the said commissioners shall by their order under seal direct : provided always, that where, under the provisions of any local Act or Acts of parliament, any person or persons shall be paid for the performance of any of the duties of vestry clerk, or for assisting in the performance of any of the duties of churchwardens or overseers of the poor, nothing herein contained respecting the duties of the vestry clerk shall apply to or be deemed to apply to the performance of such duties while the same are so performed, or while payment shall be made for the performance of them as aforesaid. *Id.* s. 8.

**2. Vestry and Auditors appointed under Stat. 1 & 2 W. 4, c. 60.**

*Adoption of the Act*, p. 418.

*Election of Vestrymen and Auditors*, p. 421.

*The Vestrymen*, p. 424.

*The Auditors*, p. 428.

*Adoption of the Act.*

*Requisition to the churchwardens*, 418.

*Notice by the churchwardens*, 419.

*Voting, how*, 419.

*Result declared*, 420.

By stat. 1 & 2 W. 4, c. 60, s. 1, the Act may be adopted by any parish [liberty, precinct, township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor, sect. 41] in England or Wales, [where the number of persons rated as householders, and having paid the rates for the relief of the poor within the year preceding that in which the provisions of this Act may be desired to be put in execution within such parish, &c. shall exceed 800. Sect. 43]:—in the manner following:—

*Requisition to the churchwardens.*] When in any parish certain of the ratepayers thereof may desire that the said parish should come under the operation of this Act, then and in that case any number of ratepayers amounting at least to one-fifth of the ratepayers of such parish, or any number of ratepayers amounting at least to fifty parishioners, may, on some day between the first day of December and the first day of March, deliver a requisition, by them signed, and describing their places of residence, to the churchwardens, or to one of them, serving for the said parish, requiring of the said churchwardens to ascertain, according to the manner hereinafter mentioned, whether or not a majority of the ratepayers of the said parish do wish and require that this Act and the provisions thereof should be adopted therein. Which requisition may be in the form, or to the tenor and effect following, that is to say:

*To the churchwardens of the parish of* [insert here the name of the parish.]

*We, whose names are hereunto subscribed, being ratepayers resident in the said parish, and respectively rated or assessed to the relief of the poor thereof, do hereby require you the*

*said churchwardens to ascertain and determine the adoption or non-adoption of an Act of the second year of the reign of King William the Fourth, chapter —, intituled, An Act [here insert the title of the Act].*

*Dated this — day of —, in the year of our Lord —.*

*Notice by the churchwardens.] And the said churchwardens of the said parish shall on the first Sunday in the month of March next after the receipt of such requisition, affix or cause to be affixed a notice to the principal doors of every church and chapel within the said parish, specifying some day not earlier than ten days and not later than twenty-one days after such Sunday, and at what place or places within the said parish, the ratepayers are required to signify their votes for or against the adoption of this Act; which votes shall be received on three successive days, commencing at eight of the clock in the forenoon, and ending at four of the clock in the afternoon of each day. 1 & 2 W. 4, c. 60, s. 3. And the said notice shall be to the following effect:—*

*The churchwardens of this parish [insert here the name of the parish] having received a requisition duly signed according to the provisions of an Act of the second year of the reign of William the Fourth, chapter —, for the better regulation of vestries, the ratepayers of this parish of [insert here the name of the parish] are hereby required, all and each of them, on the — day of — next, and the two following days, to signify to the said churchwardens by a declaration, either printed or written, or partly printed or partly written, addressed and delivered to one of the churchwardens at —, [insert here the place] their votes for or against the adoption of the aforesaid Act for the better regulation of vestries by the ratepayers of this parish.*

*(Signed) —, Churchwardens.*

*Voting, how.] The ratepayers then vote, by delivering a declaration to the churchwardens, as above mentioned, the form of which declaration, as given in sect 4, is thus:—*

*I, A. B., of — street [or — place or house] in this parish of —, vote [for or against, as the case may be,] the adoption of the Act of the second year of the reign of William the Fourth, chapter one, for the better regulation of vestries by this parish.*

*But no person shall be deemed a ratepayer, or be entitled to vote, or do any other act, matter, or thing as such under the provisions of this Act, unless he or she shall have been*



rated to the relief of the poor for the whole year immediately preceding his so voting or otherwise acting as such ratepayer, and shall have paid all the parochial rates, taxes, and assessments due from him or her at the time of so voting or acting, except such as have been made or become due within the six months immediately preceding such voting. 1 & 2 W. 4, c. 60, s. 7.

*Result declared.]* The churchwardens shall carefully examine the votes to them delivered as aforesaid, and shall compare them with the last rate made for the relief of the poor of the said parish, and shall be empowered to call before them and examine any parish officer touching the said votes, or any ratepayer so giving his vote, and after a full and fair summing-up of the said votes shall, by public notice according to the form and manner hereinafter prescribed, declare whether or not two-thirds of the votes given have been given in favour of the adoption of the said Act: provided always, that the whole number of persons voting shall be a clear majority of the ratepayers of the parish; provided also, that the adoption or non-adoption of this Act shall be decided by such number of votes as aforesaid. 1 & 2 W. 4, c. 60, s. 5.

And notice of the adoption of this Act by any parish shall be forthwith given by the churchwardens for the time being of the said parish, in the *London Gazette* and in one or more of the public newspapers circulating in the county in which the said parish may be situated, and by affixing a notice of the same to the principal doors of every church and chapel within the said parish. 1 & 2 W. 4, c. 60, s. 8. Which notice shall be to the following effect:—

*Parish of* [here insert name of parish].

*Notice is hereby given, that the above-named parish has adopted the Act of the second year of the reign of King William the Fourth, chapter —, intituled An Act [here insert the title of the Act]; and that the numbers of the majority and minority of votes given for and against the adoption of the said Act are as follows; that is to say, — votes for the adoption thereof, and — votes against the adoption thereof.*

*Dated this — day of —, in the year of our Lord —.*  
(Signed) —, Churchwardens.

If the ratepayers shall determine, in the manner as aforesaid, against the adoption of this Act, then and in that case it shall not be lawful to make another requisition for the

same purposes within three years after such determination. 1 & 2 W. 4, c. 60, s. 9.

But in any parish in which public notice of the adoption of this Act in the manner as aforesaid shall be so made and given, this Act shall immediately become the law for electing vestrymen and auditors of accounts of the said parish in manner hereinafter mentioned. *Id.* s. 10.

Provided always, that any of the ratepayers of the aforesaid parish, not exceeding five together, may inspect at or in the vestry room, or in some convenient place within the same parish, and they are hereby empowered to inspect the votes so given for and against the adoption of this Act, at all seasonable times within one month after such notice shall have been given; and the churchwardens of the said parish are hereby required carefully to preserve the said votes, and freely to permit and allow the examination thereof by the aforesaid ratepayers of the said parish at such seasonable times within the period aforesaid. *Id.* s. 6.

And if any churchwarden, rate-collector, overseer, or other parish officer shall refuse to call meetings according to the provisions of this Act, or shall refuse or neglect to make and give the declarations and notices directed to be made and given by this Act, or to receive the vote of any ratepayer as aforesaid, or shall in any manner whatsoever alter, falsify, conceal, or suppress any vote or votes as aforesaid, such churchwarden, rate-collector, overseer, or other parish officer, shall be deemed and taken to be guilty of a misdemeanor. *Id.* s. 11.

*Election of Vestrymen and Auditors.*

*When, and notice of it, 421.*  
*How, 422.*

*In what cases and how, by  
ballot, 422.*  
*Result published, 423.*

*When, and notice of it.]* In all parishes, &c., adopting this Act, the meeting of the parishioners for the election of vestrymen and auditors of accounts by the parishioners, shall take place in the month of May in every year. 1 & 2 W. 4, c. 60, s. 22. And the day on which such election shall commence, shall in the first instance be appointed by the churchwardens, but in every subsequent year by the vestry. *Id.*

And on some Sunday, at least twenty-one days previously to the day of annual election of vestrymen, notice of election, pursuant to this Act, signed by the churchwardens, shall be affixed to the principal doors of every church and chapel of

the said parish, and at other usual places, in the following terms:— (1 & 2 W. 4, c. 60, s. 12.)

*Parish of [here insert name of parish].*

*The parishioners duly qualified according to the provisions of the Act of the second year of the reign of King William the Fourth, intituled An Act [here insert the title of the Act], are hereby required to meet at —, on the — day of —, conformably to the provisions of the said Act, and then and there to consider of and elect fit and proper persons to be vestrymen and auditors of accounts of the parish of —, for the ensuing year, that is to say,*

*—, Members of the vestry.*

*—, Auditors of accounts.*

And the churchwardens may summon the rate-collectors to attend them on the said day of annual election, in order to assist them in ascertaining that the persons presenting themselves to vote are parishioners rated to the relief of the poor of the said parish, and duly qualified to vote at the said election. 1 & 2 W. 4, c. 60, s. 13.

*How.]* On the day of annual election for vestrymen and auditors in any parish adopting this Act, each parishioner then rated, and having been rated to the relief of the poor one year, desirous of voting, shall meet at the place appointed for such election, then and there to nominate eight ratepayers of the said parish as fit and proper persons to be inspectors of votes, four of such eight to be nominated by the churchwardens, and the other four to be nominated by the meeting; and after such nomination the said parishioners shall elect such parishioners duly qualified as may be there proposed for the offices of vestrymen and auditors; and the chairman shall at such meeting declare the names of the parishioners who have been elected by a majority of votes at such meeting. 1 & 2 W. 4, c. 60, s. 14.

*In what cases and how, by ballot.]* Any five ratepayers may then and there, in writing or otherwise, demand a poll, which shall be taken by ballot, each ratepayer delivering to the aforesaid inspectors two folded papers, one of which papers shall contain the names of the persons for whom such parishioner may vote as fit and proper to be members of the vestry, and the other shall contain the names of the persons for whom such parishioner may vote as fit and proper to be auditors of accounts: provided always, that each ratepayer shall have one vote and no more for the members of the vestry, and one

vote and no more for the auditors of accounts to be chosen in the said parish. 1 & 2 W. 4, c. 60, s. 15. And when a ballot is thus demanded, it shall commence on the following day, and continue for three successive days, commencing at eight o'clock in the forenoon, and closing at four o'clock in the afternoon, on each day. *Id.* s. 22.

The inspectors of votes shall deposit the said folded lists, without previously opening the same, in two separate sets of balloting glasses or boxes, one set for the vestry lists, and another for the auditors' lists; and the said balloting glasses or boxes shall be closed at the time fixed for the termination of the voting, that is, at four of the clock of the afternoon of the last day of election. *Id.* s. 16.

And after the close of the said ballot, the aforesaid inspectors shall proceed to examine the said votes, and if necessary shall continue the examination by adjournments from day to day, not exceeding four days, Sunday excepted, until they shall have decided upon the persons duly qualified according to the provisions of this Act who may have been chosen to fill the aforesaid offices. *Id.* s. 17.

And if an equality of votes should appear to the aforesaid inspectors to be given for any two or more persons to fill any or either of the said offices, in that case the inspectors shall decide by lot upon the person or persons so to be chosen. *Id.* s. 18.

And if any person shall forge or in any way falsify any name or writing in any paper or list purporting to contain the vote or votes of any parishioner as aforesaid so voting for vestrymen or auditors,—or do by any contrivance attempt to obstruct or prevent the purposes of such mode of election,—the persons so offending shall, upon information laid, and conviction before any two or more justices of the peace having jurisdiction in the parish so adopting this Act, be liable to a penalty of not less than ten and not more than fifty pounds, and in default of payment thereof shall be imprisoned for a term not exceeding six nor less than three months; and any fine so levied shall be given, half to the informer who shall have informed against the person so offending, and the other half to the poor of the parish in which the said offence shall have been committed. *Id.* s. 19.

When by reason of the populousness of any parish the said parish shall have been or shall be divided into districts for ecclesiastical or other purposes, then and in that case the said votes shall be taken, according to the aforesaid mode of election, in some convenient place, at the discretion of the churchwardens, in each of the several districts of the said parish. *Id.* s. 22.

*Result published.]* The inspectors shall, immediately after

they shall have decided upon whom the aforesaid elections have fallen, deliver to the churchwardens, or to one of them, a list of the persons chosen by the parishioners to act as vestrymen and auditors of accounts; and the said list, or a copy thereof, shall be affixed to the doors of the churches and chapels or other places chosen for the purposes of public notice in the said parish. *Id.* s. 20.

And if any inspector as aforesaid shall wilfully make or cause to be made an incorrect return of the said votes, every such offender shall, upon information laid by any person before two or more justices of the peace having jurisdiction in the said parish, and upon conviction for such offence, be liable to a penalty of not less than twenty-five pounds and not exceeding fifty pounds. *Id.* s. 21.

### *The Vestrymen.*

*Their number, 424.*

*How changed, 424.*

*Their qualification, 425.*

*Their powers, privileges, and duties, 425.*

*Their meetings, 427.*

*Their number.]* In all parishes adopting this Act, the vestry appointed and elected as herein-before mentioned shall, when the said Act shall come into full effect, consist of a certain number of resident householders; that is to say, twelve vestrymen for every parish in which the number of rated householders shall not exceed one thousand; twenty-four vestrymen for every parish in which the rated householders shall exceed one thousand; thirty-six vestrymen for every parish in which the number of rated householders shall exceed two thousand; and so on at the proportion of twelve additional vestrymen for every thousand rated householders:—provided always, that in no case the number of vestrymen shall exceed one hundred and twenty:—provided also, that in any parish wherein a greater number of vestrymen are given by special Act of parliament than the proportions aforesaid will amount to, that then the number of vestrymen shall remain the same as given by such Act of parliament;—and provided, that the rector, district rectors, vicar, perpetual curate, and churchwardens of the said parish shall constitute a part of the said vestry, and shall vote therein, in addition to the vestrymen as aforesaid elected under this Act; but no more than one such rector or other such minister as aforesaid, from any one parish or ecclesiastical district as aforesaid, shall *ex officio* be a part of or vote at any vestry meeting. 1 & 2 W. 4, c. 60, s. 23.

*How changed.]* At the first election for vestrymen after

the adoption of this Act in any parish, one-third of the then existing vestry, or the nearest number thereto, but not exceeding the same, shall retire from office (such portion to be determined by lot), and the parishioners duly qualified shall elect a number of vestrymen equal to one-third of the vestry, to be chosen according to the provisions of this Act; and that on the next ensuing annual election for vestrymen one-half, or as nearly as may be one-half, of the remaining part of the first aforesaid vestry, shall retire from office (such portion to be determined by lot), and the parishioners duly qualified shall again elect a number of vestrymen equal to one-third of the vestry, to be chosen according to the provisions of this Act; and that on the next, that is to say, the third annual election for vestrymen, the last remaining portion of the vestry as aforesaid shall retire from office, and the parishioners duly qualified shall elect vestrymen in like manner and number as at the two preceding elections, so as to fill up the vestry to the exact number of vestrymen prescribed by this Act. *Id.* s. 24.

And at every subsequent annual election, those vestrymen who have been three years in office shall go out of office, and the parishioners shall elect, according to the provisions of this Act, other vestrymen, to the number of one-third of the total number of which such vestry shall consist, as also fill up any vacancies which may have occurred from death or other causes: provided always, that any or all of the vestrymen so going out by rotation may be immediately eligible for re-election. *Id.* s. 25.

*Their qualification.]* The vestry elected under this Act in any parish, not within the metropolitan police district or the city of London, shall consist of resident householders rated or assessed to the relief of the poor upon a rental of not less than ten pounds; and no person shall be capable of acting as one of the said vestry, unless he shall be the occupier of a house, lands, tenements, or hereditaments rated or assessed upon the afore-mentioned amount of rental within the parish for which he is to serve: provided always, that if the parish adopting this Act should be within the metropolitan police district or the city of London, or if the resident householders therein should amount to more than three thousand, then and in that case, the vestry elected under this Act shall consist of resident householders rated or assessed to the relief of the poor of such parish upon a rental of not less than forty pounds per annum. *Id.* s. 26.

*Their powers, privileges, and duties.]* From and after the adoption of this Act in any parish, the vestry shall exercise the powers and privileges held by any vestry now existing in

such parish, and the authority of such vestry may be pleaded before any justice or justices of the peace, or in any court of law, in regard to all parochial property, or moneys due, or holdings or contracts, or other documents of the like nature, formerly under the control or in the keeping of the said vestry of the said parish; and all parish officers or boards shall account to them in like manner as they have accounted to the said vestry: provided always, that nothing in this Act shall be deemed, construed, or taken to repeal, alter, or invalidate any local Act for the government of any parish by vestries, or for the management of the poor by any board of directors and guardians, or for the due provision for divine worship within the parish, and the maintenance of the clergy officiating therein, otherwise than is by this Act expressly enacted regarding the election of vestrymen and auditors of accounts. *Id.* s. 27.

And all powers or duties to be performed by the vestry of any parish adopting this Act, may be exercised and performed respectively by the major part of such vestry assembled at any meeting, there not being less than five vestrymen present at a meeting of a vestry which consists of twelve or more elected vestrymen and not exceeding twenty-three, and not being less than seven vestrymen present at the meeting of a vestry which consists of twenty-four or more elected vestrymen and not exceeding thirty-five, and not being less than nine vestrymen present at a meeting of a vestry which consists of thirty-six elected vestrymen or upwards; and all orders and directions given, and all contracts and engagements entered into, by the vestrymen present at any such meeting, or the major part of them then assembled, shall be as valid and effectual as if the same were done by all the said vestrymen for the time being, and shall be binding and conclusive on all such vestrymen, provided that the same is confirmed at the next subsequent meeting of the vestry. *Id.* s. 28.

And in any parish adopting this Act, the vestry shall cause to be made out, once at least in every year, a list of the several freehold, copyhold, and leasehold estates, and of all charitable foundations and bequests, if any, belonging to the said parish, and under the control of the said vestry, the said list to contain a true and detailed account of the place where such estate or charitable foundation may be situate, or in what mode and security such bequest may be invested, specifying also the yearly rental of each, and the particular appropriation thereof, together with the names of the persons partaking of their benefit (except where such benefit shall be allotted to the poor of the parish generally), and to what amount in each case, and also stating the name and description of the persons in whom such estates are vested, and the names and description of the trustees for each charity: provided always, that the aforesaid

list shall be open for the inspection of the ratepayers, at the office of the vestry clerk, at the same time with the accounts when audited, according to the provisions of this Act. *Id.* s. 30.

*Their meetings, &c.]* In any case in which the vestry-room of any parish in any city or town shall not be sufficiently large and commodious for any vestry meeting, such meeting shall be held elsewhere within the said parish or place, but not in the church or chapel thereof. *Id.* s. 29.

And at every meeting of any vestry, in the absence of the persons authorized by law or custom to take the chair, the members present shall elect a chairman for the occasion, before proceeding to other business. *Id.* s. 30.

And the vestry of every parish adopting this Act, shall cause to be provided and kept a proper book or books, and proper entries to be made therein of the names of the several vestrymen who shall attend the respective meetings of the vestry, and of all orders and proceedings made or taken at such meetings; and all such books shall at all reasonable times be open to the inspection of the said vestrymen, and of any person rated or assessed to the relief of the poor of the said parish, and of any creditor on the rates of the said parish, without fee or reward; and the said vestrymen, persons, and creditors, or any of them, shall and may take copies of or extracts from such books respectively, without paying anything for the same; and in case the clerk to the said vestry, or other person having the care of such books, shall refuse to permit or shall not permit the said vestrymen or such persons or creditors to inspect the same, or to take such copies or extracts as aforesaid, such clerk or other person shall forfeit and pay any sum of money not exceeding ten pounds for every such offence. *Id.* s. 31.

Also, the said vestry shall and they are hereby required to cause a book or books to be provided and kept, and true and regular accounts to be entered therein of all sums of money received and disbursed for or on account of parochial purposes, and of the several articles, matters, and things for which such sums of money shall have been so received and disbursed; which book or books shall at all seasonable times be open to the inspection of the said vestrymen, and of any person or persons rated to the relief of the poor of the said parish, and of any creditor or creditors on the same, without fee or reward; and the said vestrymen and persons and creditors as aforesaid, or any of them, shall and may take copies of or extracts from the said book or books, or any part or parts thereof, without paying anything for the same; and in case the clerk to the said vestrymen, or other person with whom such books shall remain, shall on any reasonable demand refuse to permit or



shall not permit the said vestrymen, persons, or creditors, or any of them, to inspect the said book or books, or to take such copies or extracts as aforesaid, such clerk or other person as aforesaid shall forfeit and pay any sum not exceeding ten pounds for every such offence. *Id.* s. 32.

*The Auditors.*

*Their number and qualification,* 428.

*Mode of audit,* 428.

*Abstract of the accounts to be published,* 429.

*Their number and qualification.*] In every parish adopting this Act, the parishioners duly qualified to vote for vestrymen as aforesaid shall elect five ratepayers of the said parish, who shall have signified in writing their assent to serve to be auditors of accounts, which auditors shall be so elected on the first day on which the vestrymen shall be chosen after such parish shall have adopted this Act, and according to the same forms of voting as are herein-before prescribed for the election of the said vestry : provided always, that no person shall be eligible to fill the said office of auditor of accounts, who shall not be qualified according to the provisions of this Act, as herein-before stated, to fill the office of vestryman for the said parish ; and provided always, that no person shall be eligible to fill the said office of auditor of accounts, who shall be one of the vestry for the said parish ; and if any person on the day of annual election shall be chosen to be both a member of the vestry and an auditor of accounts, the said vestry at their first meeting after such election shall declare the said person incapable of acting as vestryman ; provided also, that no person shall be eligible to fill the said office of auditor of accounts, who shall be interested, either directly or indirectly, in any contract, office, business, or employ, or in providing or supplying any materials or articles for the parish for which he is to serve ; and any person who shall be discovered, after his election, to be so interested, shall cease to be an auditor. 1 & 2 W. 4, c. 60, s. 33.

*Mode of audit.*] The said auditors of accounts shall meet twice at least in each year, at the board-room of the vestry, and (a majority of the said auditors being present at such meetings) shall proceed to audit the accounts of the said vestry for the preceding half year, in presence of the vestry clerk ; and the said vestry are hereby required, by their said clerk, to produce and lay before the said auditors at every such meeting a true and just statement or account in writing, accompanied with proper vouchers, of all sums of money which may have

come to the hands of the said vestry or of their treasurer, and also of all moneys paid, laid out, or expended by them, or by any churchwardens, overseers, surveyors, or other persons by them employed, and responsible to the said vestry, since the last period up to which the accounts of the said vestry were audited : and in all parishes in which other boards shall have control over any part of the parochial expenditure, the said auditors shall have the same power of examining the accounts and officers thereof as of examining the accounts and officers of the vestry, and shall audit the accounts of the said boards in the same manner as they audit the accounts of the said vestries. *Id.* s. 34.

And the said auditors shall have power to summon and call before them, by a writing for that purpose, signed by any one of them, or by the clerk of the vestry of any parish adopting this Act, any parish officer or other person or persons whatsoever concerned in the said accounts, and to require of him or her or them to attend the said auditors at any meeting or adjourned meeting, and to bring with them all books of accounts, writings, papers, and documents required, which may concern the said accounts, and to give such information as to the particulars of such accounts, as he, she, or they shall be enabled to give ; and any parish officer or other person refusing so to attend, or otherwise wilfully obstructing the purposes of such inquiry, shall be deemed guilty of a misdemeanor. *Id.* s. 35.

And the said accounts, when audited and approved by the auditors, or by the major part of them, shall be by them signed in the presence of the clerk of the aforesaid vestry, and the said clerk of the vestry shall also affix his signature to the same ; and it shall be lawful for the said auditors to subjoin such remarks thereto as to them shall seem meet. *Id.* s. 36.

The said accounts, when so audited and signed, shall remain at the office of the clerk of the said vestry ; and the said accounts shall after such audit be open and accessible for the examination, at all seasonable times, of any person rated to the relief of the poor of the said parish, and of any creditor on the rates thereof : provided always, that nothing in this Act contained relative to the appointment and duty of auditors shall debar the parishioners from any remedy by them before possessed by the law of the land. *Id.* s. 37.

*Abstract of the accounts to be published.]* And an abstract of the accounts of all moneys received and disbursed by the vestry in any parish adopting this Act, shall twice in every year, within fourteen days after the same shall have been audited in manner in this Act mentioned, be made out by the said vestry, either in writing or in print, and a copy of such abstract shall be delivered to all persons applying for the same, and rated or assessed to the relief of the poor of the said parish,

such person paying one shilling for the same; and which copies the said clerk is hereby required to cause to be published either in writing or print, and distributed accordingly. *Id.* s. 38.

### 3. *Select Vestry.*

<p><i>How and for what purpose constituted, 430.</i></p> <p><i>Their appointment, 431.</i></p>	<p><i>Their meetings, 431.</i></p> <p><i>Their duty in relieving the poor, 432.</i></p>
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*How and for what purpose constituted.]* For the better and more effectual execution of the laws for the relief of the poor, and for the amendment thereof, it is enacted that it shall be lawful for the inhabitants of any parish in vestry assembled, and they are hereby empowered, to establish a select vestry for the concerns of the poor of such parish, and to that end to nominate and elect in the same or in any subsequent vestry, or any adjournment thereof respectively, such and so many substantial householders or occupiers within such parish, not exceeding the number of twenty nor less than five, as shall in any such vestry be thought fit to be members of the select vestry; and the rector, vicar, or other minister of the parish, and in his absence the curate thereof (such curate being resident in and charged to the poor's rates of such parish), and the churchwardens and overseers of the poor for the time being, together with the inhabitants who shall be nominated and elected as aforesaid, (such inhabitants being first thereto appointed by writing under the hand and seal of one of His Majesty's justices of the peace, which appointment he is hereby authorized and required to make,) shall be and constitute a select vestry for the care and management of the concerns of the poor of such parish; and any three of them (two of whom shall neither be churchwardens nor overseers of the poor) shall be a quorum; and when any inhabitant elected and appointed to serve in any such select vestry shall, before the expiration of his office, die, or remove from the parish, or shall become incapable of serving, or shall refuse or neglect to serve therein, the vacancy which shall be thereby occasioned shall, as soon as conveniently may be, be filled up by the election and appointment in manner aforesaid of some other substantial householder or occupier of such parish, and so from time to time as often as any such vacancy shall occur; and every such select vestry shall continue and be empowered to act from the time of the appointment thereof until fourteen days after the next annual appointment of overseers of the poor of the parish shall take place, and may be from year to year, and in any future year, renewed in the manner herein-before directed. 59 G. 3, c. 12, s. 1. But nothing in this Act shall extend to

alter, affect, or disturb any select vestry, which in any parish has been established and acted upon by virtue of any ancient usage or custom. *Id.* s. 36. If, however, such ancient select vestry have not all the powers required to be exercised under this Act, as shall presently be mentioned, a select vestry may be elected and appointed under this Act, to perform the functions, which such ancient vestry cannot. *R. v. St. Bartholomew the Great*, 2 B. & Ad. 506. *R. v. St. Martin's-in-the-Fields*, 3 *id.* 907. And such ancient vestry cannot nominate or elect the select vestry under this Act, as the Act gives that power to the inhabitants in vestry, and not to any select portion of them. *R. v. Woodman et al.*, 4 B. & A. 504. Ten days' public notice of holding a vestry for the purpose above mentioned, shall be given by the churchwardens and overseers. 59 G. 3, c. 12, s. 4.

And all the powers, provisions, and clauses in this Act contained, which relate to vestries, or to the inhabitants of any parish in vestry assembled, shall be construed to extend to all meetings of the inhabitants of any township, vill, or place having separate overseers of the poor, and maintaining its poor separately, to be held after due and legal notice, for carrying into execution the laws for the relief of the poor, as fully as if in every such provision and clause they were severally and respectively named and repeated. *Id.* s. 25.

By several local Acts, also, the poor of particular parishes have been placed under the management of select vestries.

*Their appointment.*] It will be perceived from the first section of the stat. 59 G. 3, c. 12, *supra*, that the persons so nominated and elected as members of the select vestry, must also be "appointed by writing under the hand and seal of one of His Majesty's justices of the peace, which appointment he is hereby authorized and empowered to make" (59 G. 3, c. 12, s. 1); and he cannot reject any of them, from any idea he may entertain of their insufficiency, or that they already hold offices incompatible with that of a select vestryman. *R. v. JJ. of Kent*, 4 Nev. & M. 299. As to the form of the appointment, see *Arch. P. L.* 388.

*Their meetings.*] Every such select vestry shall meet once in every fourteen days, and oftener if it shall be found necessary, in the parish church, or in some other convenient place within the parish; and at every such meeting a chairman shall be appointed by the majority of the members present, who shall preside therein, and in all cases of equality of votes upon any question there arising the chairman shall have the casting vote. 59 G. 3, c. 12, s. 1.

And they shall cause minutes to be fairly entered in books, to be for that purpose provided, of all their meetings, proceed-

ings, resolutions, orders, and transactions, and of all sums received, applied, and expended by their direction; and such minutes shall from time to time be signed by the chairman, and shall, together with a summary or report of the accounts and transactions of the select vestry, be laid before the inhabitants of the parish in general vestry assembled twice in every year, that is to say, in the month of March and the month of October, and at such other times as the select vestry shall think fit; and the minutes, proceedings, accounts, and reports of every select vestry shall belong to the parish, and be preserved with the other books, documents, accounts, and public papers thereof. *Id.* s. 3. Ten days' public notice must be given of the holding of such parish vestry, for the purpose of receiving the report of the select vestry, as above mentioned. *Id.* s. 4.

*Their duty in relieving the poor.*] The select vestry is empowered and required to examine into the state and condition of the poor of the parish, and to inquire into and determine upon the proper objects of relief, and the nature and the amount of the relief to be given; and in each case shall take into consideration the character and conduct of the poor person to be relieved, and shall be at liberty to distinguish, in the relief to be granted, between the deserving, and the idle, extravagant, or profligate poor; and such select vestry shall make orders in writing for such relief as they shall think requisite, and shall inquire into and superintend the collection and administration of all money to be raised by the poor's rates, and of all other funds and money raised or applied by the parish to the relief of the poor: and where any such select vestry shall be established, the overseers of the poor are required, in the execution of their office, to conform to the directions of the select vestry, and shall not, (except in cases of sudden emergency or urgent necessity, and to the extent only of such temporary relief as each case shall require,) give any further or other relief or allowance to the poor than such as shall be ordered by the select vestry. *Id.* s. 1.

The latter part of this section is re-enacted in substance by stat. 4 & 5 W. 4, c. 76, s. 54, by which it is enacted that the ordering, giving, and directing of all relief to the poor of any parish, which shall be under the government and control of any select vestry, shall appertain and belong exclusively to such select vestry, according to the respective provisions of the Acts under which such select vestry may have been or shall be appointed; and it shall not be lawful for any overseers of the poor to give any further or other relief or allowance from the poor rate, than such as shall be ordered by such select vestry, except in cases of sudden and urgent necessity, in which cases, we have seen (*ante*, p. 292,) he may give, and

a justice of the peace may order him to give such temporary relief as each case shall require, in articles of absolute necessity, but not in money, or medical relief where any case of sudden and dangerous illness may require it. *See this section at length, ante, pp. 291, 292.*

And by the same statute, 4 & 5 W. 4, c. 76, s. 15, the poor-law board are authorized and required, from time to time as they shall see occasion, to make and issue all such rules, orders, and regulations for the guidance and control of vestries, "so far as relates to the management and relief of the poor, and the keeping, examining, auditing, and allowing of accounts, and making and entering into contracts in all matters relating to such management or relief, or to any expenditure for the relief of the poor, and for carrying this Act into execution in all other respects, as they shall think proper."

Select vestries relieve the poor of their respective parishes, in or out of the workhouse, in the same manner as guardians, subject of course to the orders of the poor law board upon the subject.

They may order the relief to be granted by way of loan. 59 G. 3, c. 12, s. 20. *See Arch. P. L. 363, &c.*

## WATCHING AND LIGHTING.

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2. *The Inspectors, their Authority and Duties*, p. 440.
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### 1. ADOPTION OF THE ACT.

<i>The vestry meeting for the purpose</i> , 435.	<i>Act may afterwards be abandoned</i> , 438.
<i>Poll, if demanded, how taken</i> , 435.	<i>Proceedings, how, by part of a parish</i> , 439.
<i>Adoption of the Act</i> , 437.	<i>Churchwardens' expenses</i> , 439.
<i>Notice of the adoption given</i> , 438.	

By stat. 3 & 4 W. 4, c. 90, s. 71, the provisions of this Act may be adopted in any parish [or part of a parish, sect. 77] either as to lighting or as to watching, or as to lighting and watching, as may be deemed expedient; and that the provisions of this Act may be adopted in any parish so far as the same relate to lighting, although such parish shall be watched under or by virtue of any Act of parliament passed for that purpose, and may be adopted in any parish so far as the same relate to watching, although such parish shall be lighted under or by virtue of any Act of parliament passed for that purpose. And the powers here given to watch and light any parish, shall be understood to be given to any wapentake, division, city, borough, liberty, township, market town, franchise, hamlet, tithing, precinct, and chapelry, or parts within the same. *Id.* s. 77. But nothing in this Act shall be construed to interfere with the powers and provisions in the Metropolitan Police Act, 10 G. 4, c. 44, or to extend to any parish already regulated by or under the provisions of any Act of parliament for all the purposes herein provided for, or to interfere with the powers which any corporate body may have with respect to watching and lighting (*Id.* s. 72); nor shall it affect the rights, powers, or authorities of any commissioners of sewers (*Id.* s. 75), or the rights or privileges of either of the universities. *Id.* s. 76.

*The vestry meeting for the purpose.]* Upon the application in writing of three or more of the ratepayers of any parish, it shall be lawful for the churchwardens thereof, and they are hereby required, within ten days after the receipt of such application as aforesaid, to appoint and notify a time and place for a public meeting of the ratepayers of the said parish, for the purpose of determining whether the provisions in this Act contained shall be adopted and carried into execution in the said parish: provided always, that the time appointed for holding the said meeting shall not be less than ten days and not more than twenty-one days from the time of the said application so being delivered to them as aforesaid, and that notification of the time and place of meeting shall be made by forthwith affixing a notice on the principal outer door of every parish church or chapel situate within such parish, or on the usual place of affixing notices relating to the parochial affairs of any such parish, and also by publication of the same in the parish church or chapel on the Sunday previous to the day appointed for holding such meeting, during or immediately after divine service. 3 & 4 W. 4, c. 90, s. 5.

And no person shall be deemed a ratepayer, or be entitled to vote, or do any other act, matter, or thing as such under the provisions of this Act, unless he or she shall have been rated to the relief of the poor for the whole year immediately preceding his so voting or otherwise acting as such ratepayer, and shall have paid all the parochial rates, taxes, and assessments due from him or her at the time of so voting or acting, except such as have been made or become due within the six months immediately preceding such voting. *Id.* s. 14.

Such person as may be elected by the ratepayers present shall preside as chairman at such meetings; and if any controversy shall arise at any such meeting as to the qualification or right of voting or eligibility of any person claiming to vote, or as to the qualification or eligibility of any candidate, such controversy shall be determined by the chairman presiding at such meeting. *Id.* s. 6.

The chairman who shall preside at any meeting assembled as herein directed, shall read or cause to be read the requisition whereupon the meeting shall have been summoned, and shall require the persons assembled thereat to determine by majority of votes, as herein mentioned, whether the provisions of this Act, as herein set forth, shall or shall not be adopted and acted upon within such parish: provided nevertheless, that it shall be lawful for the majority of the ratepayers present to adjourn such meeting from time to time. *Id.* s. 7.

*Poll, if demanded, how taken.]* Any five rated inhabitants, qualified to vote as herein mentioned, may, at such meeting or adjournment thereof, in writing given to the chairman of



the said meeting, demand a poll to be taken of the ratepayers qualified to vote upon the question as to whether this Act and the provisions thereof, or any part thereof, shall be adopted in such parish, and also as to the amount of money to be raised in the succeeding year for the purposes thereof, and the number of inspectors to be elected as determined at such meeting, and which said demand of a poll the said chairman is required forthwith to deliver to the churchwardens of the said parish. *Id.* s. 9.

And the churchwardens of the said parish shall, on the first Sunday next after the receipt of such demand of a poll, affix or cause to be affixed a notice on the principal outer door of every parish church or chapel situate within such parish, or on the usual place of affixing notices relating to parochial affairs of any such parish, specifying some day, not earlier than ten days and not later than twenty-one days after such Sunday, and at what place or places within the said parish, the ratepayers are required to signify their votes for or against the adoption of this Act, or such part thereof as may have been agreed upon at the said meeting, as well as with respect to the annual amount of money to be raised in the succeeding year for the purposes thereof, and the number of inspectors to be elected as determined at such meeting, which votes shall be received on two successive days commencing at eight of the clock in the forenoon and ending at four of the clock in the afternoon of each day (*Id.* s. 10); which notice shall be to the following effect:—

*The churchwardens of this parish [insert the name of the parish], having received a demand for a poll, duly signed according to the provisions of an Act of the fourth year of the reign of King William the Fourth, intituled "An Act," &c. [setting out the title of the Act], the ratepayers of this parish of [insert the name of the parish] are hereby required, all and each of them, on the — day of — next, and the following day, to signify to the said churchwardens, by a declaration, either printed or written, or partly printed or partly written, addressed and delivered to one of the church wardens at [insert here the place] their votes for or against the adoption of the aforesaid Act, or so much thereof as relates to watching or lighting [as the case may be], the amount of the money to be raised in the succeeding year for the purposes thereof being — [here insert the sum agreed on at the meeting], and the number of inspectors to be elected [insert the number also agreed on], such sum and such number of inspectors being fixed and determined upon at a meeting of the ratepayers called pursuant to the said Act.*

(Signed)

—, Churchwardens.

The declaration, by sect. 11, may be to the following effect :

*I, A. B., of — street [or — place or house] in this parish of —, vote [for or against, as the case may be], the adoption of the Act of the fourth year of the reign of His Majesty King William the Fourth, intituled, "An Act," &c. [set out title of the Act], or so much thereof as relates to watching or lighting [as in the notice], the amount of the money to be raised in the succeeding year for the purposes thereof being [as in notice], and the number of inspectors to be elected — [as in notice].*

The said churchwardens shall carefully examine the votes, and shall compare them with the last rate made for the relief of the poor of the parish, and shall be empowered to call before them and examine any parish officer touching the said votes, or any ratepayer so giving his vote, and after a full and fair summing up of the said votes shall, by public notice according to the form and manner hereinafter prescribed, declare whether or not two-thirds of the votes given have been given in favour of the adoption of the said Act (or so much thereof as relates to watching or lighting, as in the notice), and also as to the sum of money to be raised in the succeeding year, and the number of inspectors to be elected to be (as in the notice): provided always, that the whole number of persons voting shall be a clear majority of the ratepayers of the parish: provided also, that in case of a poll being demanded as aforesaid, the adoption or non-adoption of this Act, with the sum to be raised, and the number of inspectors to be elected as aforesaid, shall be decided by such number of votes as aforesaid. *Id.* s. 12.

And any of the ratepayers of the aforesaid parish, not exceeding five together, may inspect, at or in the vestry-room or in some convenient place within the same parish, and they are hereby empowered to inspect, the votes so given for and against the adoption of this Act, with the sum to be raised, and number of inspectors to be elected as aforesaid, at all seasonable times within one month after such notice shall have been given; and the churchwardens of the said parish are hereby required carefully to preserve the said votes, and freely to permit and allow the examination thereof by the aforesaid ratepayers of the said parish at all seasonable times within the period aforesaid. *Id.* s. 13.

*Adoption of the Act.]* If at any such meeting it shall be determined by a majority consisting of two-thirds of the votes of the ratepayers present at such meeting that the provisions of this Act shall be adopted, then and in such case such provisions shall from thenceforth take effect and come into operation in such parish; and it shall forthwith be determined that

a certain number, not being more than twelve nor less than three inspectors, shall be elected to carry such purposes into effect ; and the number of inspectors so determined upon shall be elected in manner hereinbefore mentioned. *Id.* s. 8.

But in case any such meeting convened as aforesaid, or, in case of a poll having been demanded as aforesaid, a majority of two-thirds of the voters as aforesaid, shall not have determined to adopt the provisions of this Act, it shall not be lawful for the inhabitants to meet again in less than one year from the period at which such meeting shall have been so convened as aforesaid. *Id.* s. 16.

And the ratepayers of such parish shall at their first meeting or at some adjournment thereof, and so on from time to time in every succeeding year at a meeting to be called for that purpose in manner herein directed, fix and determine the total amount of money which the inspectors shall have power to call for in any one year, in order to carry into effect the provisions of this Act, such sum to be raised in the manner herein directed, upon the full and fair annual value of all property rateable for the relief of the poor within such parish, such full and fair annual value to be computed according to the last valuation for the time being acted upon in assessing the poor's rate for the said parish. *Id.* s. 9.

*Notice of the adoption given.]* Notice of the adoption of this Act (or any part thereof, specifying it), with the amount of the sum to be raised in the succeeding year, and the number of inspectors to be elected by any parish, shall be forthwith given by the churchwardens for the time being of the said parish, by affixing a notice of the same to the principal door of every church and chapel within the said parish, or on the usual place of affixing notices relating to the parochial affairs of such parish ; and in such case the provisions of this Act shall from thenceforth take effect and come into operation in the said parish. *Id.* s. 15.

*Act may afterwards be abandoned.]* It shall be lawful, however, for the inhabitants, present at any meeting called in manner herein directed, at any time after the expiration of three years from the time when the provisions of this Act shall have been adopted, to determine that the provisions of this Act shall, from and after a day to be fixed upon at such meeting, cease to be acted upon ; in which case, from and after such last-mentioned day, the provisions of this Act shall no longer be in force in such parish : provided nevertheless, that the provisions in this Act contained shall remain and continue in force for the purpose of collecting and recovering any rate which may have been previously made ; and if on the abandonment and ceasing to act upon the provisions of this Act

there shall be any balance in the hands of the said inspectors, after defraying the expenses incurred in carrying into effect the provisions of this Act, the said balance shall be paid over to the overseers of the poor of the said parish, to be applied in aid of the poor rates of the said parish. *Id.* s. 15.

*Proceedings how, by part of a parish.]* It shall and may be lawful to and for the inhabitants of part of any parish to hold a meeting of the inhabitants of such part to be convened in manner herein directed, and to be composed of such inhabitants only, for the purpose of determining whether the provisions in this Act contained, or any of them, shall be adopted and carried into execution in such part of the said parish; and that all such meetings shall be subject and liable to all the clauses, regulations, and restrictions in this Act contained in respect of meetings to be convened for the purposes thereof; and that the churchwardens of the said parish shall act in the same manner for such part of the parish, the inhabitants of which may be desirous of adopting the provisions of this Act, for carrying the provisions of the same into effect, as they could by virtue hereof act for the parish at large; and that the overseers of the poor of the said parish, or of any township or division of the said parish, shall be amenable to the provisions of this Act, so far as they may relate to the part of such parish situate within or partly within the division or district for which such overseers shall act, for the purpose of levying, raising, and paying the rates within the part of such parish adopting the provisions of this Act, in the same manner as they would be if the whole parish, township, or place for which they act had adopted the provisions of this Act: provided always, that no proceedings of the said inhabitants, nor any rate to be raised or levied in pursuance of such proceedings, shall extend to any part of the said parish which may already be regulated by or under the provisions of any Act for the purposes in this Act mentioned, nor interfere with the powers and provisions of such Act or the execution thereof in any respect whatsoever. *Id.* s. 73. Where a district of a parish was assigned to a chapel, and chapelwardens appointed, who had authority in ecclesiastical matters only, all parochial business being transacted by the churchwardens of the parish; a meeting of the inhabitants of the district, for the purpose of considering whether this Act should be adopted in the district, being called by the chapelwardens, it was holden that the meeting and the whole of the subsequent proceedings were null and void; that the meeting should have been called by the churchwardens of the parish. *R. v. Kingswinford*, 23 Law J. 337, qb.

*Churchwardens' expenses.]* The expenses incurred by the

churchwardens, in calling such meeting, giving the notice aforesaid, and in taking such poll, shall be paid out of the rate collected for the relief of the poor in the said parish. *Id.* s. 12.

## 2. THE INSPECTORS, THEIR AUTHORITY AND DUTIES.

*How elected, 440.*

*Their meetings, 441.*

*Their appointment of officers, 443.*

*Their accounts when and how rendered, 445.*

*Actions by and against them, 446.*

*How elected.]* The number of inspectors to be elected, we have seen (*ante*, pp. 437, 438), is determined by the inhabitants, at the time they adopt the Act. By stat. 3 & 4 W. 4, c. 90, s. 17, the inspectors shall be elected in manner following: (that is to say), the churchwardens of any parish adopting the provisions of this Act shall, in the manner herein first directed, forthwith call a meeting of the ratepayers of such parish, and each candidate, being a person who shall reside within such parish, and who shall have been assessed or charged by the last rate made for the relief of the poor in respect of a dwelling-house or other tenement or premises of the annual value, according to the said rate, of fifteen pounds or more, shall be eligible to be elected an inspector for the purposes of this Act, and shall be proposed at the said meeting by some person duly qualified to vote thereat, and shall be seconded by some other person in like manner qualified; and if more candidates than the number of inspectors authorized to be elected shall be proposed, and a poll shall be demanded by any ten persons qualified to vote on behalf of any such candidates, then the chairman shall open and proceed with such poll, and in a book or books prepared for that purpose, which book or books the churchwardens are hereby required to cause to be prepared, shall enter or cause to be entered the name of all such candidates, and the name of every person duly qualified to be present and vote who shall desire to vote, together with his description and abode, and shall register the vote of every such person for every or any such candidate as every such person may respectively require; and if the votes of all the persons duly qualified and desirous to vote cannot be conveniently collected and registered by four of the clock of the same day upon which the poll shall have been commenced, then the chairman shall at that hour adjourn such poll to the day next succeeding, unless such day shall be a Sunday, Christmas Day, or Good Friday, and in that case to the day following, and then proceed to collect and register the votes of all persons duly qualified and

applying to vote ; provided nevertheless, that the poll shall finally close at four of the clock on the day to which it shall have been adjourned, or sooner, provided all persons duly qualified and desirous to vote shall have voted, and after the lapse of one hour without any person offering to vote ; and as soon after the close of the poll as may be possible the result thereof shall be declared at the place where the election may have been holden, and certified by the chairman to the overseers of the poor ; and the said churchwardens shall be reimbursed all such reasonable charges and expenses as may be incurred in providing clerks and books, and otherwise in the performance of the duties hereby required of them by the candidates at the said election for the said office : provided nevertheless, that if the provisions of this Act are adopted at the meeting first called for that purpose, the said inspectors may be appointed at the same time by the ratepayers of such parish then present, unless a poll shall be demanded, and if such poll should be demanded it shall be proceeded with as herein directed. *Id.* s. 17.

Afterwards at the annual meeting hereinafter mentioned, one-third of the inspectors, or as near thereto as the number appointed will admit of, shall go out of office in rotation ; and in place of such inspectors so going out of office a like number of other inspectors shall be elected ; provided always, that any of such out-going inspectors shall be re-eligible, and may be re-elected, and shall in such case continue to act and remain in office, anything herein to the contrary notwithstanding. *Id.* s. 19. And the chairman appointed to preside at such annual meeting shall proceed in such manner as the chairman at the first meeting to be held under this Act is hereinbefore directed to proceed at the election of the inspectors to be first appointed for the execution of this Act, and shall decide on questions which may arise as to the eligibility or qualification of any person whatsoever, and as to all matters whatsoever, connected with the said election, and shall declare the result of the same as aforesaid. *Id.* s. 20. So, if any inspector shall die, or become disqualified by change of residence or otherwise, or shall neglect to act, and in case of any casual vacancy happening in any manner whatever, so that the number of inspectors shall be reduced to less than three, notice shall be immediately given by the acting inspectors to the churchwardens of the parish, who shall forthwith, in the manner directed by this Act, call a meeting of the rated inhabitants as aforesaid for the purpose of filling up such vacancy or vacancies. *Id.* s. 21.

*Their meetings.]* The inspectors for executing this Act in any parish shall meet on the first Monday in every month, at noon, at some convenient place or office previously publicly

notified ; and at such monthly meeting it shall be lawful for any inhabitant rated to the relief of the poor of any such parish to appear there, and prefer any matter of complaint which he may think proper to make concerning any matter or thing done by force or in pursuance of or under pretence of the provisions of this Act. *Id.* s. 22.

And such inspectors shall meet at all other times and so often as at any previous meeting shall be determined upon ; and it shall be at all times competent for any one inspector, when three inspectors only shall have been appointed, and in all other cases for any two inspectors, by writing under his or their hands, to summon, upon at least forty-eight hours' notice, the inspector, for any special purpose therein named, and for such time as shall be therein named ; and that at all meetings of such inspectors any number not less than one-third of the whole number when more than three inspectors shall have been appointed, and when only three inspectors shall have been appointed, then not less than two inspectors, shall constitute a quorum for transacting business. *Id.* s. 23.

And all acts, orders, and proceedings of the said inspectors at any of their meetings shall be entered in a book to be kept by them for that purpose, and shall be signed by two of the inspectors who were then present ; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings ; and such books shall and may be produced and read as evidence of all such acts, orders, and proceedings upon any appeal or trial or in any information, or any proceedings civil or criminal, and in any court or courts of law or equity whatsoever. *Id.* s. 30.

And the said inspectors shall and they are hereby required from time to time to order and direct a book or books to be provided and kept, in which book or books shall be entered true and regular accounts of all sums of money received, paid, and expended for or on account of the purposes of this Act, and of the several articles, matters, and things for which such sums of money shall have been disbursed and paid ; and such book or books shall at all reasonable times be open to the inspection of the said inspectors and of every inhabitant rated to the relief of the poor of the parish adopting the provisions of this Act, without fee or reward ; and the said inspectors and other persons aforesaid, or any of them, shall or may take copies of or extracts from the said book or books, or any part thereof, without paying for the same ; and in case the said inspectors shall refuse to permit or shall not permit the said persons aforesaid to inspect the same, or take copies or extracts as aforesaid, such inspector shall forfeit and pay any sum of money not exceeding five pounds for each default,

to be levied and applied in manner hereinafter provided. *Id.* s. 31.

Also by sect. 61, it shall be lawful for the inspectors appointed by any parish adopting the provisions of this Act to unite with the inspectors of any adjoining parish or parishes, for the better carrying into effect the purposes of this Act.

*Their appointment of officers.]* The inspectors for the time being are authorized and required to appoint, during pleasure, such treasurer and other officers as they shall think necessary, and to remove and displace the same, and to hire and rent a sufficient office or house or room for holding their meetings and transacting their business, and also to appoint suitable salaries, wages, and allowances to and for such treasurer and other officers, and also to agree for a reasonable rent for such office or house or room, and to pay such salaries, wages, and allowances, and such rent, out of the moneys received under the authority of this Act : provided nevertheless, that no person shall at the same time hold two offices or situations under the said inspectors. *Id.* s. 24.

The inspectors, or any two or more of them, are required to take security from the treasurer, for the due execution of his office of treasurer, which security shall be to the full amount of the sum likely to be in the hands of the said treasurer at any one time ; and in case any such treasurer shall neglect or refuse for the space of three weeks next after his appointment to give or offer such security to the satisfaction of the said inspectors, then the appointment of every such person so neglecting or refusing shall be null and void to all intents and purposes, and the said inspectors shall within three weeks then next assemble and appoint some other fit and proper person to the office of treasurer, instead of the person so refusing or neglecting as aforesaid, and shall so assemble and appoint from time to time until security shall be given to their satisfaction as aforesaid. *Id.* s. 25.

And every such treasurer and other officer shall, under his respective hand, and at such time or times and in such manner as the said inspectors shall direct, deliver to the said inspectors or such person as they shall appoint true and perfect accounts in writing of all matters and things committed to his charge, and also of all moneys which shall have been received by virtue of or for the purposes of this Act, and of how much thereof shall have been expended and disbursed and for what purposes, together with proper vouchers, and that every such officer shall pay all such moneys as shall remain due from him to the treasurer for the time being, or to such person or persons as the said inspectors shall appoint to receive the same ; and if any such treasurer, officer, or other



person shall refuse or neglect to make and render such account, or to produce and deliver up the vouchers relating to the same, or to make payments as aforesaid, or shall refuse or wilfully neglect to deliver to the said inspectors, or to such person or persons as they shall appoint to receive the same, within three days after being thereunto required by the said inspectors, by notice in writing under the hands and seals of any two or more of the said inspectors, given to or left at the last or usual place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said inspectors or such other person or persons as aforesaid respecting the same, then and in every such case, upon complaint made by the said inspectors or by such person or persons as they the said inspectors shall appoint for that purpose, of any such refusal or wilful neglect as aforesaid, to any justice of the peace, such justice may and he is hereby authorized and required to issue a summons under his hand and seal for the officer so refusing and neglecting to appear before two justices of the peace; and upon the said officer appearing, or having been so summoned and not appearing without some sufficient and reasonable excuse, or not being found, it shall be lawful for the said justices to hear and determine the matter in a summary way: and if upon confession of the party, or by the testimony of any credible witness or witnesses upon oath (which oath such justices are hereby empowered to administer), it shall appear to such justices that any moneys remain due from such officer, such justices may and they are hereby authorized and required, upon non-payment thereof, by warrant under their hands and seals, to cause such money to be levied by distress and sale of the goods and chattels of such officer; and if no goods and chattels of such officers shall be found sufficient to answer and satisfy the said money, and the charges of distraining and selling the said goods and chattels, or if it shall appear to such justices that such officer had refused or wilfully neglected to render and give such account, or to produce the vouchers relating thereto, or that any books, papers, or writings relating to the execution of this Act remained in the hands or in the custody or power of such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case such justices shall and they are hereby required to commit such offender to the common gaol or house of correction for the county, city, or place where such offender shall be or reside, there to remain without bail or mainprize, until he shall have given a true and perfect account as aforesaid, or until he shall have paid such moneys as aforesaid, or compounded with the said inspectors for such money, and shall have paid such compo-

sition in such manner as they shall appoint (which composition the said inspectors are hereby empowered to make and receive), and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof, to the said inspectors, or to such other person or persons as aforesaid ; but no such offender shall be kept or detained in such common gaol or house of correction for want of sufficient distress by virtue of this Act for any longer space of time than three calendar months. *Id.* s. 26. But no prosecution or commitment, under the provisions of this Act, of any treasurer or other officer or person to be appointed under the powers of this Act, shall acquit or discharge any surety or security that shall or may have been taken by or given to the said inspectors for the due and faithful execution of his or their office, or the payment of the moneys received by him or them respectively. *Id.* s. 27.

And if any person who shall be employed as treasurer, or any other officer or servant who shall be in anywise employed by the said inspectors for putting this Act or any of the powers thereof into execution, shall exact, take, or accept any fee or reward whatsoever, other than such salaries, allowances, and rewards as are appointed by this Act, or shall be appointed, allowed, and approved of by the said inspectors, for or on account of anything done or to be done by virtue of this Act, or on any account whatsoever relative to the putting this Act into execution, or shall in anywise be concerned or interested in any bargain or contract made or to be made by the said inspectors ; and no person, during the time he holds the office of inspector, shall accept or hold any office or place of trust created by virtue of this Act within the said parish, or shall be concerned directly or indirectly in any contract with the said parish ; every such person so offending shall be incapable of ever serving or being employed under this Act, and shall over and above forfeit the sum of fifty pounds to any person or persons who shall sue for the same. *Id.* s. 28.

*Their accounts, when and how rendered.]* The inspectors shall within one month next after the expiration of twelve calendar months from the day of such adoption, give notice to the churchwardens of the said parish that they are ready to produce their accounts and vouchers for the previous year, and thereupon the said churchwardens shall give due notice in the manner required with respect to the first meeting to be held under this Act, that a meeting of the ratepayers of the said parish will be held at an hour and place in the said notice to be mentioned on some day, not being a Sunday, within ten days from the receipt of such notice, for the purpose of the said inspectors producing such accounts and vouchers, and for the election of inspectors for the execution of this Act, and for

determining the amount of the money to be raised for the purposes of this Act for the current year ; and in every future year such meeting shall, for the purposes aforesaid, be held on the same day in the corresponding month, except such day should fall on a Sunday, and then on the day following. *Id.* s. 18. And at such annual meeting the said inspectors shall produce their accounts and vouchers of all moneys received and paid by virtue of this Act for the previous year ; and a duplicate or copy of such accounts, verified on oath before any two justices by the said inspectors, or any two of them, shall be deposited with the said inspectors, and shall be open at all reasonable times to the inspection of all parties interested. *Id.* s. 19.

*Actions by and against them.]* The said inspectors may sue and be sued in the name of any one of the inspectors for the time being ; and all actions or suits that may be necessary or expedient to be brought for the recovery of any penalty or sum of money due or payable by virtue of this Act, or for or in respect of any other matter or thing relating to this Act, may be brought in the name of any one of the said inspectors ; and that no action or suit which may be brought, commenced, or prosecuted by or against the said inspectors, or any of them, by virtue or on account of this Act, shall abate or be discontinued by the death, resignation, or removal of such inspector, but such inspector shall be deemed plaintiff or defendant in any such action or suit (as the case may be) : provided also, that in all cases in which the inspector as aforesaid shall, in pursuance of this Act, be the plaintiff or defendant on the record in any action or actions, suit or suits, in which in effect the said inspectors shall be suing or sued in the name of such one inspector as aforesaid, he (although appearing as the plaintiff or defendant on the record) may and shall nevertheless (if not otherwise interested or objectionable) be a good, examinable, and competent witness in every action or suit, either for or against the said inspectors ; and all the affidavits of debt or service which may be necessary or expedient to be made preparatory to or in the prosecution or defence of any and every such action, suit, or proceeding, shall and may be lawfully made by such one inspector, notwithstanding he shall be nominal plaintiff or defendant on the record as aforesaid : provided also, that every or any such inspector in whose name any action or suit shall be commenced, prosecuted, or defended in pursuance of this Act, shall always be reimbursed and paid out of the moneys to arise by virtue of this Act, all such costs, charges, and expenses as he shall be put to or become chargeable with by reason of his being made plaintiff or defendant therein ; and in case of his removal from office, or ceasing to act as such inspector, all such costs, charges, and expenses

shall be paid by the inspector for the time being ; and no inspector shall be personally answerable or liable for the payment of the same or any part of them, unless such action or suit shall arise in consequence of his own wilful neglect or default, or have been brought or commenced or be defended without the order or direction of the said inspectors. *Id.* s. 29.

### 3. THE RATE.

<i>Order to the overseers, 447.</i>		<i>Amount to be paid to treasurer, 448.</i>
<i>Rate made and levied, 447.</i>		

*Order to the overseers.*] We have seen (*ante*, p. 438) that at the first meeting, and afterwards annually at a meeting to be called for the purpose, the inhabitants shall determine the total amount of money which the inspectors shall have the power to call for in the year, in order to carry into effect the provisions of the Act. And by sect. 32, as soon as the inspectors shall have been elected as aforesaid, it shall be lawful for them, or any two or more of them, from time to time to issue an order under their hands to the overseers of the poor of any parish to which the provisions of this Act shall be extended, by which order they shall require the said overseers to levy the amount mentioned in the said order. *Id.* s. 32.

And where persons other than the overseers of the poor shall by virtue of any office or appointment be authorized and required to make and collect or cause to be collected the rate for the relief of the poor in any parish to which all or any of the provisions of this Act shall be extended, such persons, by whatsoever title they may be called, shall be deemed to be overseers of the poor within the meaning of this Act, and to be included under and denoted by the words "overseers of the poor," for all the purposes of this Act, as fully as if they were commonly called or known by the title of overseers of the poor. *Id.* s. 37.

*Rate made and levied.*] The overseers aforesaid shall, for the purpose of collecting, raising, and levying the rate necessary for the purposes of this Act, proceed in the same manner, and have the same powers, remedies, and privileges, as for levying money for the relief of the poor in the said parish : provided always, that owners and occupiers of houses, buildings, and property (other than land) rateable to the relief of the poor in any such parish shall be rated at and pay a rate in the pound three times greater than that at which the owners and occupiers of land shall be rated at and pay for the purposes of this Act : provided also, that the total amount of the sum to be collected, raised, and levied for the purposes of this

Act, within any one year, shall not exceed such sum as shall have been agreed on by the inhabitants of the said parish as aforesaid, and that the said sum shall be assessed upon the full and fair annual value to which lands, houses, buildings, and other property within the said parish shall be rated or shall be rateable according to the last valuation made and acted upon for the rate for the relief of the poor within the said parish. *Id.* s. 33.

And it shall be lawful for the overseers of the poor of any such parish, and they are hereby required, whenever, according to the rate made for the relief of the poor, one and the same person shall be rated in one sum in respect of land, and also of houses, buildings, and other property, to cause such land, and also such other buildings, and other property to be separately assessed, and the sum hereby authorized to be levied shall be assessed accordingly: provided always, that every court-yard, yard, or garden (such garden not being a market-garden or nursery ground) shall be included in and make part of the assessment to be made on the house, buildings, or other property to which they may be respectively attached; provided also, that such land, houses, buildings, and other property shall not in the whole be assessed at a higher amount than they were in the last rate made for the relief of the poor within the said parish. *Id.* s. 34.

And if the overseers of the poor of any parish adopting the provisions of this Act shall go out of office before they shall have collected or levied the amount mentioned in the order issued under the hands of the said inspectors in pursuance of this Act, they shall deliver to the succeeding overseers within seven days from the time they go out of office, a full and particular account in writing of the names of the parties to whom any money may be due on account of the rate made in pursuance of this Act, as well as the last order issued to them by the said inspectors; and in such case the succeeding overseers shall have the like powers and remedies under this Act for the collecting and recovery thereof, and shall be liable to the same penalties and forfeitures in case of the non-payment to the said inspectors, as their predecessors had or were liable to. *Id.* s. 35.

This statute gives an appeal against the rate in the same manner in every respect as an appeal against a poor-rate. *Id.* s. 67.

*Amount to be paid to the treasurer.]* The overseers to whom any such order as aforesaid shall be issued, shall pay over the amount mentioned in such order to the treasurer to be appointed in the said parish under this Act within three calendar months from the delivery of such order to one of the overseers, and shall keep the accounts of the said rate levied

for the purposes of this Act separate and distinct from the account of the rates levied in the same parish for the relief of the poor ; and at the time of making any payment to the said treasurer, the said overseers shall deliver to him a note in writing signed by them, specifying the amount so paid, which note shall be kept by the treasurer as a voucher for his receipt of that particular amount ; and the receipt of the said treasurer, specifying the amount paid to him by the overseers, shall be a sufficient discharge to the overseers for such amount, and shall be allowed as such in passing their accounts with their respective parishes. *Id.* s. 36.

And in case the amount directed by such order as aforesaid to be paid by the overseers in any parish to which all or any of the provisions of this Act shall be extended shall not be paid to the said treasurer within the time specified for that purpose in the said order, any justice of the peace, upon complaint thereof made to him by the said treasurer or by any one of the inspectors, may and he is hereby authorized and required to issue a summons under his hand and seal for the said overseers so refusing or neglecting to pay such money as aforesaid to appear before two justices of the peace ; and upon the said overseers appearing, or having been so summoned and not appearing, without some sufficient and reasonable excuse, or not being found, it shall be lawful for the said justices and they are hereby required, in case the said money is not paid, to issue their warrant for levying the amount, or so much thereof as may be in arrear, by distress and sale of the goods of all or any of the said overseers ; and in case the goods of all the overseers shall not be sufficient to pay the same, the arrears thereof shall be added to the amount of the next levy which shall be directed to be made in such parish for the purposes of this Act, and shall be collected by the like method. *Id.* s. 38.

#### 4. WATCHING.

*Watchmen appointed, 449. | Their power and duties, 454.*

*Watchmen appointed.]* The said inspectors shall from time to time appoint and employ such number of able-bodied watchhouse keepers, serjeants of the watch, watchmen, patrols, streetkeepers, and other persons as they shall think sufficient for the proper protection of the inhabitants, houses, and property, streets and other places within the limits of this Act, by day or by night, or by day and by night, and provide for the use of all such watchmen, watchhouse keepers, serjeants of the watch, patrol, and persons as aforesaid, such clothing, arms, ammunition, and weapons, and shall assign to them

such beats, and rounds, and duties, and appoint such hours for them to be on duty, and also such wages, rewards, and gratuities, or remunerations for their services, and also make such rules, orders, and regulations relative to such watchhouse keepers, serjeants of the watch, watchmen, patrols, streetkeepers, and other persons, and their duties, as to the said inspectors shall seem meet, and also shall and may offer and give, as well to the said persons as to any other not specially employed by them, such gratuities and rewards for apprehending felons and others, offenders within the limits of this Act, as to them shall seem proper; and shall and may defray the expenses of prosecuting any such felons and offenders, for the protection of the inhabitants of any parish adopting the provisions of this Act, or in defending any of the said persons or other officers of the said inspectors in the execution of their duty, as they shall think proper; and the said wages, rewards, gratuities, and the costs of such prosecutions or defences, and all other expenses that may be incurred by the said inspectors for the protection and guard of the inhabitants, shall and may be paid by the said inspectors out of the moneys received in pursuance of this Act. *Id.* s. 39.

And the inspectors shall cause such a number of watchhouses or watch-boxes to be provided, erected, or affixed, as they shall think necessary for watching all or any of the streets, roads, and places within the limits of this Act. *Id.* s. 45.

And all such clothing, arms, ammunition, and weapons, so provided for the use of such watchmen, watchhouse keepers, serjeants of the watch, patrol, and persons as aforesaid, shall remain and continue the property of the inspectors for the time being, and, in case of the resignation, removal, or death of any such watchmen, watchhouse keeper, serjeant of the watch, patrol, or person as aforesaid, shall be returned to the said inspectors; and, in case of neglect or refusal so to do, the said watchmen, watchhouse keeper, serjeant of the watch, patrol, or person as aforesaid, or in case of his death, the party in possession thereof, shall be subject and liable to a penalty not exceeding the sum of twenty pounds, to be recovered for the use of the said inspectors. *Id.* s. 40.

By stat 3 & 4 Vict. c. 88 (see *ante*, p. 67, tit. *County Constables*), s. 20, after reciting that an Act [3 & 4 W. 4, c. 90] was passed in the fourth year of the reign of his late Majesty, making provisions for the lighting and watching of parishes in England and Wales, and divers Acts have been made authorizing the appointment of constables and watchmen, by day or night, in sundry towns and places within the counties in which stat. 2 & 3 Vict. c. 93, may be put in

force, and authorizing rates to be made and levied for the purpose of defraying the expenses of such constables or watchmen; it is enacted, that, notwithstanding any thing contained in the said Act, 2 & 3 Vict. c. 93, the constables or watchmen appointed in and for any parish under the said Act 3 & 4 W. 4, c. 90, or in and for any town or place under any such local Act as last aforesaid, and not discontinued before the passing of this Act, shall continue to act, in their respective appointments, and shall be subject to the same authorities as heretofore; and all such Acts shall continue in force until it shall be notified by the chief constable of the county in which such parish, town, or place is situated, to the inspectors, commissioners, or other persons having authority over such constables or watchmen as aforesaid, by writing under his hand, that he is ready to undertake the charge of such parish, town, or place, on some day to be specified in the notice, which notice shall be published within such parish, town, or place, in such manner as shall seem fit to the chief constable, for the purpose of making the same to be generally known; and upon the day so named, the watchmen or constables appointed within such parish, town, or place, under the said Act 3 & 4 W. 4, c. 90, or under such local Act, shall be discontinued as a separate force; and all powers for assessing and levying any rate in such parish, town, or place, the whole or any part of which shall be applicable to the payment of such watchmen or constables, or any expenses incident thereunto, shall cease, so far as such powers relate to any whole rate so applicable, or to that part of any rate which shall be so applicable, except for such purposes as are hereinafter mentioned: provided always, that notwithstanding any thing in stat. 2 & 3 Vict. c. 93, contained, the powers of all such Acts shall endure for the purpose of enabling the inspectors, commissioners, or other persons charged with the execution of any such Act, to make such application as aforesaid to the chief constable of the county for the appointment in any such town or place of an additional number of constables, and to assess and levy such rates as are authorized by the said Acts in each case for defraying the expenses of constables or watchmen, and to apply them in defraying the expense of so many additional constables in such town or place respectively as the chief constable, on their application, and with the approval of the justices as aforesaid, shall appoint there: provided also, that where any parish, town, or place, in which constables have been appointed under any such local Act, shall be situated in more than one county, such notice shall not be given by the chief constables of either county to the commissioners or other persons having authority over the constables in such parish,



town, or place, until after constables shall have been appointed under stat. 2 & 3 Vict. c. 93, in each of such counties. 3 & 4 Vict. c. 88, s. 20.

And upon the day mentioned in such notice as last aforesaid, all watchhouses and watchboxes in any such parish or place, and all arms, accoutrements, and other necessities provided at the public expense for the watchmen or constables therein, shall be given up to such persons as shall be named by the said chief constable, for the use and accommodation of the constables to be appointed under stat. 2 & 3 Vict. c. 93; and in case any person having the charge, control, or possession of any watchhouse, watchbox, arms, accoutrements, or necessities as aforesaid, shall neglect or refuse to give up the same as hereinbefore required, every such offender being convicted thereof before any two justices of the peace, shall for every such offence forfeit and pay, over and above the value of the property not given up, such sum, not exceeding five pounds, as the said justices shall think meet; and where there shall be any building in any such parish or place as aforesaid, a part only of which building shall have been heretofore used as a watchhouse, such part shall be given up every day, from the hour of four in the afternoon until the hour of nine in the forenoon, for the use and accommodation of the constables to be appointed under the first recited Act; and if any person, having the charge, control, or possession of any such building, shall neglect or refuse to give up such part thereof for the purposes aforesaid, or to permit free access thereto or egress therefrom during any portion of the time above prescribed, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence forfeit and pay such sum, not exceeding five pounds, as the said justices shall think meet. *Id.* s. 21.

And any rate authorized by the said Act, 3 & 4 W. 4, c. 90, or by any such local Act, for defraying the expenses of the constables or watchmen in any parish or place, made previous to the day on which the said chief constable shall undertake the charge thereof, shall be levied and collected in the same manner as if stat. 2 & 3 Vict. c. 93, or this Act had not been passed; and nothing herein contained shall be deemed to affect or alter any powers or authorities for assessing and levying any rate in such parish or place, so far as such rate may relate to paving, lighting, cleansing, or any other object, except the constables or watchmen, or any expenses incident thereto. *Id.* s. 22.

And whereas there are certain parishes and places in which monies have been borrowed or advanced, and debts contracted, under some one or more of such Acts as last aforesaid, for the building of watchhouses, and for various expenses connected with the constables or watchmen therein, and such monies and

debts remain unpaid, and it is expedient that the same be discharged; be it enacted, that all such monies and debts, in any parish or place of which the said chief constables shall undertake the charge, shall, notwithstanding anything hereinbefore contained, be chargeable upon the rates out of which such monies or debts have been heretofore in part paid, or would have been payable if stat. 2 & 3 Vict. c. 93, or this Act had not been passed; and such rates shall be from time to time assessed and levied for the payment of such monies and debts until the same shall be entirely discharged and satisfied. *Id.* s. 23.

And by stat. 19 & 20 Vict. c. 69, s. 18, until the constables or watchmen appointed in and for any parish, town, or place under the Act passed in the session holden in the third and fourth years of King William the Fourth, chapter ninety, or under any local Act authorizing the appointment of constables or watchmen, and authorizing rates to be made and levied for the purpose of defraying the expenses of such constables or watchmen, are discontinued as a separate force in manner provided by section twenty of the said Act of the third and fourth years of Her Majesty and by this Act, all the provisions of this Act applicable to the constables of any borough acting under the said Act of the fifth and sixth years of King William the Fourth shall be applicable to the constables or watchmen appointed under the said Act of the third and fourth years of King William the Fourth, or under such local Act as aforesaid, in and for such parish, town, or place, and until such discontinuance all the provisions of this Act applicable to the watch committee of a borough shall be applicable to the inspectors, commissioners, or other persons having the appointment of constables or watchmen in and for such parish, town, or place, and the police of such parish, town, or place shall be visited and inquired into by the inspectors under this Act; and the provision in this Act enabling the commissioners of Her Majesty's treasury to make payment towards the expenses of the police of a borough having a population exceeding five thousand, shall, until such discontinuance, extend to the police of such parish, town, or place as aforesaid having the like population. 19 & 20 Vict. c. 69, s. 18.

Provided, that where any such parish, town, or place, having such constables or watchmen as aforesaid, contains, according to the last parliamentary enumeration, a population of fifteen thousand persons or upwards, the chief constable of the county in which such parish, town, or place is situate shall not give notice, under the said section twenty of the said Act of the third and fourth years of Her Majesty, that he is ready to undertake the charge of such parish, town, or place, without the previous authority of one of Her Ma-

jeesty's principal secretaries of state; and notice of the intention of the chief constable to apply to the secretary of state for such authority shall be published by such chief constable in such parish, town, or place, in manner directed by the said section twenty respecting the publication of the notice therein mentioned, fourteen days at least before such application is made. *Id.* s. 19.

*Their power and duties.]* The watchmen, serjeants of the watch, and patrols shall be sworn in as constables before any justice of the peace, and act as such while in execution of the powers and authorities of this Act; and they are hereby invested with and shall have and enjoy the like powers and authorities, privileges, and immunities, and shall be subject and liable to such and the like penalties and forfeitures, as any constable or constables is or are invested with, or shall or may have and enjoy, or is or are or shall be subject or liable to by law. 3 & 4 W. 4, c. 90, s. 42.

And all such watchmen, serjeants of the watch, patrols, and other persons to be appointed by virtue of this Act shall, during the time they shall be on duty, use their utmost endeavours to prevent any mischief by fire, and also to prevent all robberies, burglaries and other felonies and misdemeanors, and other outrages, disorders and breaches of the peace within the limits of the parish adopting the provisions of this Act, and to apprehend and secure all felons, rogues, vagabonds, and disorderly persons who shall disturb the public peace, or any person or persons wandering, secreting, or misbehaving himself, herself, or themselves, or whom they shall have reasonable cause to suspect of any evil designs, and to secure and keep in safe custody every such person, in order that he or she may be conveyed as soon as conveniently may be before one of His Majesty's justices of the peace, to be examined and dealt with according to law; and it shall and may be lawful to and for the said watchmen, serjeants of the watch, patrols, and other person or persons so appointed as aforesaid, to call and require any person or persons to aid and assist them in taking such felons, rogues, vagabonds, and all disorderly or suspected persons as aforesaid; and in case any person or persons shall assault or resist, or shall promote or encourage the assaulting or resisting any of the watchmen, serjeants of the watch, patrols, or other person or persons so appointed as aforesaid, in the execution of their duty, every such person shall for every such offence forfeit and pay any sum not exceeding forty shillings; and in case any such offender shall not, on conviction, pay the said forfeiture, such justice is hereby required to commit him, her, or them to the house of correction, there to be kept to hard labour, if the said justice shall so order, for any time not exceeding three calendar

months, unless such forfeiture shall be sooner paid ; or, instead of committing the said offender as aforesaid, the said justice may, by warrant under his hand and seal, cause the said forfeiture, as well as the costs (if any), to be levied by distress and sale of the goods and chattels of the offender, returning the overplus (if any) of the money raised or recovered, after discharging the said forfeiture, and the costs and expenses of recovering and levying the same, to the owner of the goods and chattels so seized and distrained. *Id.* s. 41.

And in all cases, in which any of the duties usually performed by constables shall have been executed by any of the officers appointed by the inspectors as herein-before enacted, all fees and allowances for the performance of such duties shall be paid over to the said inspectors, to be by them applied in aid of the rate levied under the provisions of this Act. *Id.* s. 43.

## 5. LIGHTING.

*Lamps, gas, &c., 455.*

| *Taking or damaging lamps,  
watchboxes, &c., 455.*

*Lamps, gas, &c.]* It shall be lawful for the said inspectors and they are hereby empowered from time to time to cause such lamp irons or lamp posts or other posts to be put or fixed upon or against the walls or pallsadoes of any houses, tenements, buildings, or inclosures, (doing as little damage as may be practicable thereto,) or to be put up and erected in such other manner within all or any of the said roads, streets, and places within the limits of this Act, as they shall think proper ; and also to cause such number of lamps, of such sizes and sorts, to be provided and affixed and put upon such lamp irons and lamp posts, as they shall think necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with gas, oil, or otherwise, for such number of hours in every twenty-four hours as they shall think necessary ; and also to cause such a number of watchhouses or watchboxes to be provided, erected, or affixed, as they shall think necessary for watching all or any of the streets, roads, and places within the limits of the Act (*Id.* s. 45). The Act then states a number of provisions as to the laying down of the gas pipes, contracting for gas, &c., which it is unnecessary to notice here. See sects. 46-54, 57-59.

*Taking or damaging lamps, watchboxes, &c.]* If any person shall wilfully break, throw down, spoil, or damage any watchhouse, watchbox, or lamp, lamp iron, lamp post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any such lamp, it shall be lawful for any person or

persons who shall see the offence committed to apprehend, and also for any other person or persons to assist in apprehending, the offender or offenders, and by the authority of this Act, and without any warrant, to deliver him or them to any constable, who is to keep him, her, or them in safe custody, and with all reasonable dispatch to convey him, her, or them before any justice of the peace; and such justice shall examine upon oath any witness or witnesses who shall appear to be produced to give evidence touching such offence; and if the party accused shall be convicted of any such offence, either by his, her, or their confession, or upon such evidence as aforesaid, he, she, or they shall forfeit any sum not exceeding forty shillings for every lamp, lamp iron, or lamp post so broken, thrown down, or damaged, and shall also make full satisfaction for the damage which shall have been done thereby, and not exceeding five pounds for any other such offence as aforesaid, and shall also make full satisfaction for the damage which shall have been done thereby; and one moiety of such forfeiture shall be paid to the person or persons apprehending such offender, and the other moiety shall be applied for the purposes of this Act, and shall be levied and recovered in the same manner as any forfeiture is by this Act hereinbefore directed to be levied and recovered in the case of any person assaulting any watchman or other person in the execution of his duty. *Id.* s. 55. As to the mode of proceeding for penalties given by the statute, see sects. 62–66.

Also, the property of and in all lamps, lamp irons, lamp posts, watchhouses, watchboxes, posts, chains, pales, and rails in, about, or belonging to the said streets and places within any parish or part of a parish adopting the provisions of this Act, or any of them, and of and in all the iron, timber, stone, bricks, and other materials and furniture and things of, in, and belonging thereto, (except when the same shall be otherwise regulated by contract with the said inspectors,) shall be and the same are hereby vested in the said inspectors, and may be sold and disposed of from time to time as they shall think proper; and the money arising from such sale or sales shall be applied towards the purposes of this Act; and the said inspectors are hereby authorized and empowered to bring or cause to be brought any action or actions in such name or names and in manner as herein is provided, or to prefer or order and direct the preferring of any bill or bills of indictment, against any person or persons who shall steal, take, or carry away (as the case may be) all or any part of such lamp irons, lamp posts, watchhouses, watchboxes, iron, timber, and stone, bricks, furniture, posts, chains, pales, rails, or other materials and things as aforesaid; and in all such actions or bills of indictment it shall be and be deemed and taken to be sufficient to state generally that the article or articles, thing or

things, for or on account of which such action or actions shall be brought, or such bill or bills of indictment preferred, is or are the property of the inspectors, without particularly stating or specifying the name or names of all or any of the said inspectors. *Id.* s. 60.

#### 6. FIRE ENGINE.

It shall be lawful for the said inspectors from time to time to provide and keep up fire engines, with pipes and other utensils proper for the same, for the use of the parish adopting the provisions of this Act, and to provide a proper place or places for the keeping of the same, and to place such engines under the care of some proper person or persons, and to make him or them such allowance for his or their trouble as may be thought reasonable; and the expenses attending the providing and keeping of such engines shall be paid out of the money authorized to be received by the inspectors under the provisions of this Act. *Id.* s. 44.



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